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Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

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Research References

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West's A.L.R. Digest, [Constitutional Law](#) 🔑 [3010](#), [3013](#), [3037](#), [3073](#), [3073\(1\)](#), [3073\(2\)](#), [3088](#), [3101](#), [3104](#), [3110](#) to [3133](#), [3140](#) to [3143](#), [3163](#), [3173](#) to [3176](#), [3263](#) to [3269](#), [3273](#), [3286](#) to [3290](#), [3292](#), [3295](#), [3297](#), [3299](#), [3331](#), [3334](#), [3350](#), [3351](#), [3368](#), [3470](#) to [3473](#), [3475](#) to [3669](#), [3675](#) to [3677](#), [3715](#) to [3723](#), [3739](#), [3741](#)

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16C C.J.S. Constitutional Law § 1593

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Constitutional Law

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§ 1593. Administrative agencies and proceedings

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3470 to 3473

Administrative agencies are bound by the constitutional guarantee of equal protection.

An administrative agency must conform to equal protection requirements.¹ An action by a governmental administrative body that discriminates among classes of citizens must have a rational basis to withstand an equal protection challenge.² A court may enjoin an administrative agency from enforcing its regulations in a manner that violates equal protection.³ While the principles of discriminatory enforcement, which originated in the context of criminal prosecutions, also apply to agency proceedings, a discriminatory purpose is never presumed in cases involving regulatory enforcement by a state agency performing its statutory functions; instead, the party asserting this defense must show clear, intentional discrimination.⁴

Administrative classifications do not enjoy any greater immunity from challenge on equal protection grounds than do statutes, and exemptions from administrative orders may not be justified on the basis of tradition alone.⁵ While mere inconsistency on the part of an administrative agency⁶ or an erroneous denial⁷ does not violate equal protection, the denial of an application, when similar ones were granted, violates equal protection by denying the applicant a benefit granted to others similarly situated, despite a contention that the previous permits had been granted in error, where there was no showing that the government body had taken appropriate remedial action.⁸

Statutes providing for different rights to a contested case hearing before an administrative agency in cases involving different types of applications may have rational basis, such as where hearing rights were provided elsewhere for a specialized approval process.⁹ Furthermore, equal protection is not violated by requiring an environmental assessment where the government body merely followed the requirements of an environmental statute requiring that the assessment be prepared upon the receipt of an appropriate petition from a citizens group, and no such petition had been filed in an earlier instance.¹⁰

A statute may not treat persons with standing in a dissimilar manner with respect to judicial review of administrative procedures.¹¹ However, equal protection was not violated by a judicial review statute that allegedly distinguished between those who sought review of an approval subject to conditions that were rejected by the agency and persons who opposed the decision under any condition.¹²

CUMULATIVE SUPPLEMENT

Cases:

Town board of health did not have an independent duty to apply statutory standards and criteria for the siting of solid waste facilities when considering proposal for vertical landfill addition, but rather could follow Department of Environmental Protection regulations regarding capacity increases of existing landfills which were not expansions and the Department's interpretation of its regulations. [M.G.L.A. c. 111, §§ 150A, 150A 1/2. *Goldberg v. Board of Health of Granby*, 444 Mass. 627, 830 N.E.2d 207 \(2005\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 [U.S.—*Nazareth Hosp. v. Secretary U.S. Dept. of Health and Human Services*, 747 F.3d 172 \(3d Cir. 2014\).](#)
[Md.—*Baltimore Import Car Service & Storage, Inc. v. Maryland Port Authority*, 258 Md. 335, 265 A.2d 866 \(1970\).](#)
- 2 [U.S.—*Nazareth Hosp. v. Secretary U.S. Dept. of Health and Human Services*, 747 F.3d 172 \(3d Cir. 2014\).](#)
[Ark.—*Second Baptist Church v. Little Rock Historic Dist Com'n*, 293 Ark. 155, 732 S.W.2d 483 \(1987\).](#)
Freedom of information exemptions
The compelled release of certain types of documents under a state freedom of information act, while the withholding of documents relating to the work papers and correspondence of various state officials is allowed, did not result in a denial of equal protection as there was a rational basis for the exclusion of these official papers—the protection and promotion of free exchange of thought in each branch of government.
[Ark.—*McCambridge v. City of Little Rock*, 298 Ark. 219, 766 S.W.2d 909 \(1989\).](#)
Notice by mail
The use of certified or registered mail to inform a civil rights complainant of the dismissal of an administrative claim was rationally related to the agency's legitimate interest in the expeditious and accurate notification of those affected by its decision and thus did not violate the Equal Protection Clause.
[Conn.—*Rogers v. Commission on Human Rights and Opportunities*, 195 Conn. 543, 489 A.2d 368 \(1985\).](#)
Landfill permits
[R.I.—*Birchwood Realty, Inc. v. Grant*, 627 A.2d 827 \(R.I. 1993\).](#)
- 3 [Alaska—*Herrick's Aero-Auto-Aqua Repair Service v. State, Dept. of Transp. and Public Facilities*, 754 P.2d 1111 \(Alaska 1988\).](#)
[Tex.—*Melmat, Inc. v. Texas Alcoholic Beverage Com'n*, 362 S.W.3d 211 \(Tex. App. Dallas 2012\).](#)

- 4 Tex.—*State v. Malone Service Co.*, 829 S.W.2d 763 (Tex. 1992).
- 5 Cal.—*United States Steel Corp. v. Public Utilities Com.*, 29 Cal. 3d 603, 175 Cal. Rptr. 169, 629 P.2d 1381 (1981).
- 6 Wis.—*Kachian v. Optometry Examining Bd.*, 44 Wis. 2d 1, 170 N.W.2d 743 (1969).
- 7 N.J.—*Rivkin v. Dover Tp. Rent Leveling Bd.*, 143 N.J. 352, 671 A.2d 567 (1996).
- 8 S.C.—*Weaver v. South Carolina Coastal Council*, 309 S.C. 368, 423 S.E.2d 340 (1992).
- 9 Wis.—*Waste Management of Wisconsin, Inc. v. State Dept. of Natural Resources*, 149 Wis. 2d 817, 440 N.W.2d 337 (1989).
- 10 Minn.—*Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203 (Minn. 1993).
- 11 Wis.—*Milwaukee Brewers Baseball Club v. Wisconsin Dept. of Health and Social Services*, 130 Wis. 2d 79, 387 N.W.2d 254 (1986).
- 12 Or.—*Committee in Opposition to the Prison in Malheur County v. Oregon Emergency Corrections Facility Siting Authority*, 309 Or. 678, 792 P.2d 1203 (1990).

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16C C.J.S. Constitutional Law § 1594

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Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

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§ 1594. Alienage

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3013, 3110 to 3133

While the federal government has broad powers in areas involving aliens, state statutes that discriminate against aliens are subject to strict scrutiny unless they are directed at nonresident or undocumented aliens or implement federal policy.

Aliens are protected by the Equal Protection Clause.¹ As a general matter, a state law that discriminates on the basis of alienage may be sustained only if it can withstand strict judicial scrutiny, and the law must advance a compelling state interest by the least restrictive means available.² However, strict scrutiny is not required in all cases,³ and the rational relationship test⁴ may be applied,⁵ such as in the case of nonresident⁶ or undocumented aliens.⁷ Another exception to the rule that most classifications based on alienage are inherently suspect exists for "political functions," such as voting or being a juror.⁸

The equal protection doctrine limiting the use of alienage classifications does not apply when Congress exercises its powers in the areas of foreign policy, immigration, and naturalization⁹ because, for equal protection purposes, aliens have no fundamental right to be in the United States.¹⁰ The federal power to regulate immigration is sufficient to justify federal discrimination involving aliens,¹¹ and in the exercise of its naturalization power, Congress is permitted to deny benefits to aliens subject only to the requirement that its classifications meet the rational basis test.¹² Thus, different treatment of aliens under the Fourth

Amendment with regard to the government's power to conduct a search does not violate the equal protection component of the Fifth Amendment.¹³ Distinctions on the basis of nationality may be drawn in the field of immigration by Congress,¹⁴ and so long as they are supported by some rational basis, they will be sustained.¹⁵ For instance, since the right of a permanent resident alien to remain in the country is not fundamental, equal protection rights are not violated if there is a rational basis for deportation.¹⁶ Similarly, a provision requiring an illegitimate child born abroad when the father is a United States citizen to establish paternity during minority in order to acquire nationality status, while legitimate children and illegitimate children of a citizen mother acquire nationality status at birth, has been upheld.¹⁷

A state may deny benefits to aliens if the discrimination is rationally related to the constitutional obligation to avoid conflicts with federal law and imposes no burden on aliens not anticipated by Congress.¹⁸ While there may be support for the proposition that a state may withhold benefits from those who are illegally in the United States, this rule does not apply to classifications imposing disabilities on those persons' minor children.¹⁹

The appropriate standard in the context of an equal protection challenge to a statute that discriminates between groups of aliens, rather than between citizens and aliens, depends on whether the classification is a suspect one.²⁰

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Footnotes

- 1 § 1262.
- 2 U.S.—*Bernal v. Fainter*, 467 U.S. 216, 104 S. Ct. 2312, 81 L. Ed. 2d 175 (1984); *Graham v. Richardson*, 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971); *Korab v. Fink*, 748 F.3d 875 (9th Cir. 2014).
The strict scrutiny test is discussed in § 1275.
As to strict scrutiny of welfare laws that discriminate against aliens, see § 1476.
Firearms statute
A state statute prohibiting the unlicensed possession of firearms by a noncitizen who had not declared his or her intention to become a citizen of the United States raises equal protection questions under the compelling state interest test, but a person convicted of the offense did not overcome the presumption of constitutionality to support his facial challenge to the statute.
Wash.—*State v. Hernandez-Mercado*, 124 Wash. 2d 368, 879 P.2d 283 (1994).
A.L.R. Library
Validity of state statutes restricting right of aliens to bear arms, 28 A.L.R.4th 1096.
- 3 **Exception**
There is an exception to the general rule that state laws that discriminate on the basis of alienage are subject to strict scrutiny; where Congress has enacted uniform national guidelines and policies dictating how states are to regulate and legislate issues relating to aliens, this general rule subjecting the state classification to strict scrutiny does not apply to state laws that merely adopt uniform federal guidelines.
Mass.—*Finch v. Commonwealth Health Ins. Connector Authority*, 461 Mass. 232, 959 N.E.2d 970 (2012).
- 4 § 1279.
- 5 U.S.—*Brikova v. Holder*, 699 F.3d 1005(8th Cir. 2012); *Toro v. Secretary, U.S. Dept. of Homeland Sec.*, 707 F.3d 1224, 80 A.L.R. Fed. 2d 731 (11th Cir. 2013).
N.J.—*Matter of Adoption of a Child by L. C.*, 85 N.J. 152, 425 A.2d 686, 14 A.L.R.4th 725 (1981).
- 6 Ariz.—*Jalifi v. Industrial Com'n of Arizona*, 132 Ariz. 233, 644 P.2d 1319 (Ct. App. Div. 1 1982).
- 7 U.S.—*Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982).
Nev.—*Tarango v. State Indus. Ins. System*, 117 Nev. 444, 25 P.3d 175 (2001).
State dividends
The traditional rational basis test was applied to determine whether a regulation barring illegal aliens from receiving state permanent fund dividends violated equal protection.
Alaska—*State, Dept. of Revenue, Permanent Fund Dividend Div. v. Cosio*, 858 P.2d 621 (Alaska 1993).

- 8 Mass.—*Com. v. Acen*, 396 Mass. 472, 487 N.E.2d 189 (1986).
- 9 U.S.—*Perdido v. Immigration and Naturalization Service*, 420 F.2d 1179 (5th Cir. 1969); U.S. v. *Tsuda Maru*, 479 F. Supp. 519 (D. Alaska 1979).
- 10 U.S.—*De Martinez v. Ashcroft*, 374 F.3d 759 (9th Cir. 2004).
- 11 U.S.—*Lawrence v. Holder*, 717 F.3d 1036 (9th Cir. 2013).
- Distinction between excludable and deportable aliens**
- U.S.—*Alvarez-Garcia v. Ashcroft*, 378 F.3d 1094 (9th Cir. 2004).
- Illegal possession of firearms**
- Congress can rationally distinguish between legal aliens and illegal aliens, and therefore, statute prohibiting possession of firearms while being illegally or unlawfully in the United States did not violate illegal alien's rights under Equal Protection Clause.
- U.S.—*U.S. v. Carpio-Leon*, 701 F.3d 974 (4th Cir. 2012), cert. denied, 134 S. Ct. 58, 187 L. Ed. 2d 50 (2013).
- 12 U.S.—*Romero-Ochoa v. Holder*, 712 F.3d 1328 (9th Cir. 2013); *Rangel-Zuazo v. Holder*, 678 F.3d 967 (9th Cir. 2012).
- N.J.—*Matter of Adoption of a Child by L. C.*, 85 N.J. 152, 425 A.2d 686, 14 A.L.R.4th 725 (1981).
- 13 U.S.—*U.S. v. Verdugo-Urquidez*, 494 U.S. 259, 110 S. Ct. 1056, 108 L. Ed. 2d 222 (1990).
- 14 U.S.—*Narenji v. Civiletti*, 617 F.2d 745 (D.C. Cir. 1979).
- 15 U.S.—*Akhtar v. Gonzales*, 406 F.3d 399, 2005 FED App. 0199P (6th Cir. 2005); *Chuang v. U.S. Atty. Gen.*, 382 F.3d 1299 (11th Cir. 2004).
- 16 U.S.—*Castillo-Felix v. Immigration & Naturalization Service*, 601 F.2d 459 (9th Cir. 1979).
- 17 U.S.—*Ablang v. Reno*, 52 F.3d 801 (9th Cir. 1995).
- 18 U.S.—*Korab v. Fink*, 748 F.3d 875 (9th Cir. 2014).
- N.J.—*Matter of Adoption of a Child by L. C.*, 85 N.J. 152, 425 A.2d 686, 14 A.L.R.4th 725 (1981).
- As to the application of this rule with respect to family assistance, see § 1478.
- No rational relationship**
- U.S.—*Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053 (9th Cir. 2014).
- Undocumented aliens**
- States have broad latitude under the Equal Protection Clause to deny opportunities and benefits to undocumented aliens.
- U.S.—*Dandamudi v. Tisch*, 686 F.3d 66 (2d Cir. 2012).
- 19 U.S.—*Plyler v. Doe*, 457 U.S. 202, 102 S. Ct. 2382, 72 L. Ed. 2d 786, 4 Ed. Law Rep. 953 (1982).
- As to denial of access to public schools, see § 1475.
- 20 Mass.—*Doe v. Commissioner of Transitional Assistance*, 437 Mass. 521, 773 N.E.2d 404 (2002).
- N.Y.—*Khrapunskiy v. Doar*, 12 N.Y.3d 478, 881 N.Y.S.2d 377, 909 N.E.2d 70 (2009).
- Suspect classifications are generally discussed in § 1282.

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PART VI. Privileges and Immunities; Equal Protection


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§ 1595. American Indians

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Rights afforded American Indians are not subject to strict scrutiny.

The traditional equal protection analysis, requiring a compelling state interest to justify invidious racial discrimination,¹ does not apply to legislation or governmental action that favors American Indians.² This is because the policy giving preference to Indians is not based on race but on culture and operates to exclude everyone in the world except Indians.³ Accordingly, certain rights may be provided to Indians that are not available to non-Indians,⁴ or to Indians of different tribes,⁵ without violating the Equal Protection Clause, as where those rights are accorded by treaty, because the peculiar status of Indians justifies special treatment when it is rationally related to the government's unique obligation toward Indians.⁶ However, it has been held that permitting nondrug use of peyote in bona fide religious ceremonies by Indian members of the Native American church but prohibiting the same use by non-Indian members would violate the Equal Protection Clause as it would impose a racial exclusion to church membership.⁷

Federal criminal statutes with respect to Native American tribes, though relating to Native Americans as such, do not violate the equal protection requirements of the Fifth Amendment because distinctions based upon tribal affiliation are not invidious race-based distinctions but are distinctions based upon the quasi-sovereign status of Native American Indian tribes under federal law.⁸

An Indian tribe failed to state a claim for an equal protection violation by alleging that the Army Corps of Engineers, by releasing excess flood waters into tribal lands, protected non-Indians and non-Indian land from excess flood water while failing to provide tribal lands with any relief.⁹

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Footnotes

- 1 § 1282.
- 2 U.S.—*Washington v. Confederated Bands and Tribes of Yakima Indian Nation*, 439 U.S. 463, 99 S. Ct. 740, 58 L. Ed. 2d 740 (1979).
 Gambling
 Rational basis analysis applies to a tribe's equal protection challenge to a statute prohibiting authorization of gambling on the tribe's lands.
 U.S.—*Narragansett Indian Tribe v. National Indian Gaming Com'n*, 158 F.3d 1335 (D.C. Cir. 1998).
- 3 U.S.—*Livingston v. Ewing*, 455 F. Supp. 825 (D.N.M. 1978), judgment aff'd, 601 F.2d 1110 (10th Cir. 1979).
- 4 U.S.—*Morton v. Mancari*, 417 U.S. 535, 94 S. Ct. 2474, 41 L. Ed. 2d 290 (1974).
 As to fishing and hunting rights, see § 1604.
- 5 Minn.—*State v. Forge*, 262 N.W.2d 341 (Minn. 1977).
- 6 U.S.—*Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 99 S. Ct. 3055, 61 L. Ed. 2d 823 (1979), opinion modified on other grounds, 444 U.S. 816, 100 S. Ct. 34, 62 L. Ed. 2d 24 (1979).
- 7 U.S.—*U.S. v. Boyll*, 774 F. Supp. 1333 (D.N.M. 1991).
- 8 U.S.—*U.S. v. Cavanaugh*, 643 F.3d 592 (8th Cir. 2011).
- 9 U.S.—*Miccosukee Tribe of Indians of Florida v. U.S.*, 716 F.3d 535 (11th Cir. 2013).
 As to equal protection of property rights, generally, see § 1589.

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§ 1596. Animals

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West's Key Number Digest

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Statutes regulating the keeping of animals are upheld if there is a reasonable ground for the classification.

A statute or ordinance regulating the keeping and use of animals does not violate the Equal Protection Clause if it applies alike to all owners and animals similarly situated,¹ and there are reasonable grounds for the classification.² Statutes have been upheld regarding the pasturing of sheep,³ prohibiting keeping any fowl or swine for commercial purposes within a town,⁴ or providing for a minimum area upon which livestock can be kept.⁵

A dog's potential for rabies and substantial violence generally sets it apart from other domestic animals, and special regulations applicable only to dogs,⁶ such as those requiring licenses and vaccinations, do not deny equal protection.⁷ The unique hazards presented by pit bulls provide a rational basis for an ordinance regulating their owners.⁸ A statute prohibiting dogfighting does not violate equal protection.⁹

A city ordinance requiring dogs and cats to be spayed or neutered unless a listed exemption was met was rationally related to its purpose, which was control the pet overpopulation problem and promote the public health and safety, and thus did not violate dog owners' equal protection rights.¹⁰

Equal protection is not violated by ordinances prohibiting possession of dangerous animals as pets¹¹ and classifying wolves as wild animals for this purpose.¹²

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Footnotes

- 1 Cal.—*Simpson v. City of Los Angeles*, 40 Cal. 2d 271, 253 P.2d 464 (1953).
Haw.—*Mahiai v. Suwa*, 69 Haw. 349, 742 P.2d 359 (1987).
Mont.—*Thompson v. Tobacco Root Co-op. State Grazing Dist.*, 121 Mont. 445, 193 P.2d 811 (1948).
- 2 Cal.—*Simpson v. City of Los Angeles*, 40 Cal. 2d 271, 253 P.2d 464 (1953).
Exemption for zoos
N.C.—*Cannady v. North Carolina Wildlife Resources Commission and Com'rs*, 30 N.C. App. 247, 226 S.E.2d 678 (1976).
- 3 U.S.—*Omaechevarria v. State of Idaho*, 246 U.S. 343, 38 S. Ct. 323, 62 L. Ed. 763 (1918).
- 4 Ark.—*Phillips v. Town of Oak Grove*, 333 Ark. 183, 968 S.W.2d 600 (1998).
- 5 S.C.—*Wells v. Finley*, 260 S.C. 291, 195 S.E.2d 623 (1973).
- 6 Me.—*State v. Clarke*, 396 A.2d 228 (Me. 1979).
Fierce, dangerous, or vicious ones
Utah—*Greenwood v. City of North Salt Lake*, 817 P.2d 816 (Utah 1991).
- 7 Fla.—*Pinellas County Veterinary Medical Soc., Inc. v. Chapman*, 224 So. 2d 307 (Fla. 1969).
- 8 Colo.—*Colorado Dog Fanciers, Inc. v. City and County of Denver By and Through City Council*, 820 P.2d 644 (Colo. 1991).
Kan.—*Hearn v. City of Overland Park*, 244 Kan. 638, 772 P.2d 758, 80 A.L.R.4th 51 (1989).
- 9 Ga.—*Hargrove v. State*, 253 Ga. 450, 321 S.E.2d 104 (1984).
- 10 Cal.—*Concerned Dog Owners of California v. City of Los Angeles*, 194 Cal. App. 4th 1219, 123 Cal. Rptr. 3d 774 (2d Dist. 2011).
- 11 Iowa—*Kent v. Polk County Bd. of Sup'rs*, 391 N.W.2d 220 (Iowa 1986).
- 12 S.C.—*Peoples Program for Endangered Species v. Sexton*, 323 S.C. 526, 476 S.E.2d 477 (1996).

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Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

P. Other Particular Applications

§ 1597. Annexation by or organization of municipalities

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3351, 3482, 3483

Annexation procedures, including elections, are subject to equal protection requirements, but there is no requirement that an election be held.

Annexation procedures are subject to the equal protection requirements.¹ While the legislative denial of the right to vote upon an annexation does not violate equal protection,² if a state chooses to give residents of an area to be annexed an opportunity to vote on the annexation, that right must be afforded in a manner that comports with the Equal Protection Clause.³ Statutes giving the power to block an election for municipal incorporation or annexation to private owners of a certain percent of the value of the territory sought to be incorporated or annexed are infirm, under strict equal protection standards.⁴

On the basis that the territorial area of a municipality may be expanded with or without the consent of the citizens,⁵ equal protection is not denied where the residents of the area subject to annexation are not afforded the right to vote on the annexation proposal even though the approval of voters residing in the annexing territory is required,⁶ those voluntarily seeking either annexation to or exclusion from an incorporated area are allowed to petition,⁷ or only the residents of the annexation area are allowed to vote.⁸

Equal protection is not violated because the combined majority vote of the electorate of the political subdivision and the electorate of the area proposed to be annexed is necessary to the annexation.⁹

There is no denial of equal protection in requiring citizens¹⁰ or a municipality¹¹ to show that a particular annexation is reasonable.

It is not a denial of equal protection for a city to annex land without annexing other lands similarly situated.¹²

Unless otherwise required by the annexation order, a city may treat citizens in an annexed area differently from those in the rest of the city if it can establish a rational basis for doing so.¹³

A provision requiring the unanimous vote of a board of county commissioners to grant a petition to incorporate a city within a certain distance of an existing one does not violate equal protection since the requirement is rationally related to the legitimate objective of preventing an unreasonable multiplicity of independent municipal governments.¹⁴

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Footnotes

- 1 Cal.—*Scuri v. Board of Supervisors*, 134 Cal. App. 3d 400, 185 Cal. Rptr. 18 (2d Dist. 1982).
Ohio—*Bd. of Lucas Cty. Commrs. v. Waterville Twp. Bd. of Trustees*, 171 Ohio App. 3d 354, 2007-Ohio-2141, 870 N.E.2d 791 (6th Dist. Lucas County 2007).
Petition requirement rational
Ariz.—*Goodyear Farms v. City of Avondale*, 148 Ariz. 216, 714 P.2d 386 (1986).
- 2 U.S.—*Berry v. Bourne*, 588 F.2d 422 (4th Cir. 1978).
Cal.—*Weber v. City Council*, 9 Cal. 3d 950, 109 Cal. Rptr. 553, 513 P.2d 601 (1973).
Fla.—*North Ridge General Hospital, Inc. v. City of Oakland Park*, 374 So. 2d 461 (Fla. 1979).
La.—*Kansas City Southern Ry. Co. v. City of Shreveport*, 354 So. 2d 1362 (La. 1978).
Miss.—*Lowe v. City of Jackson*, 336 So. 2d 490 (Miss. 1976).
N.M.—*Torres v. Village of Capitan*, 1978-NMSC-065, 92 N.M. 64, 582 P.2d 1277 (1978).
- 3 U.S.—*Hayward v. Clay*, 573 F.2d 187 (4th Cir. 1978).
As to equal protection requirements with regard to elections, generally, see §§ 1412 et seq.
- 4 Cal.—*Curtis v. Board of Supervisors*, 7 Cal. 3d 942, 104 Cal. Rptr. 297, 501 P.2d 537 (1972).
Wash.—*City of Seattle v. State*, 103 Wash. 2d 663, 694 P.2d 641 (1985).
- 5 Miss.—*Lowe v. City of Jackson*, 336 So. 2d 490 (Miss. 1976).
- 6 Iowa—*City of Decorah v. Peterson*, 203 N.W.2d 629 (Iowa 1973).
- 7 Miss.—*Lowe v. City of Jackson*, 336 So. 2d 490 (Miss. 1976).
- 8 Fla.—*City of Long Beach Resort v. Collins*, 261 So. 2d 498 (Fla. 1972).
- 9 Ala.—*City of Birmingham v. Norton*, 255 Ala. 262, 50 So. 2d 754 (1950).
Fla.—*Capella v. City of Gainesville*, 377 So. 2d 658 (Fla. 1979).
- 10 Mo.—*Binger v. City of Independence*, 588 S.W.2d 481 (Mo. 1979).
- 11 U.S.—*State ex rel. Hudson v. City of Chattanooga*, 512 S.W.2d 555 (Tenn. 1974).
- 12 N.C.—*Piedmont Ford Truck Sale, Inc. v. City of Greensboro*, 324 N.C. 499, 380 S.E.2d 107 (1989).
- 13 Va.—*City of Richmond v. Levi*, 226 Va. 625, 311 S.E.2d 114 (1984).
- 14 Kan.—*Matter of Application for Incorporation as The City of Sherwood*, 241 Kan. 396, 736 P.2d 875 (1987).

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16C C.J.S. Constitutional Law § 1598

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

P. Other Particular Applications

§ 1598. Armed services and veterans

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [3101](#), [3163](#), [3331](#), [3665](#) to [3669](#)

The courts will uphold statutes and other governmental actions relating to the armed services and veterans that afford equal protection, giving deference to the military's judgment.

When judging the rationality of a military regulation for equal protection purposes, a court must give deference to the considered professional judgment of appropriate military officials.¹ The courts have generally upheld actions relating to the armed services and National Guard in the face of equal protection challenges.²

The courts have upheld statutes relating to selective service exempting persons under or over specified ages,³ specified classes of students,⁴ persons claiming conscientious objection status,⁵ or persons employed in war industries.⁶

A provision of the Manual for Courts-Martial making it a violation for a member of the armed services to possess or use marijuana or a habit forming narcotic drug has been upheld.⁷

The courts have upheld statutes and other governmental actions relating to veterans and veterans' benefits against a contention of deprivation of equal protection.⁸ A statute denying veterans' benefits under certain circumstances will be upheld where it

is based on a distinction that has a rational basis,⁹ and a statute providing educational benefits for veterans who have served on active duty in the armed services, while denying them to conscientious objectors who perform alternative civilian service, has been upheld.¹⁰

As a general rule, statutes conditioning the distribution of state veterans' benefits on residence in the state at a fixed point in the past violate the federal constitutional right to equal protection where limiting benefits to veterans who were state residents at the time they entered active military service is not rationally related to a legitimate state purpose.¹¹ Such a condition has failed a strict scrutiny¹² or compelling state interest test,¹³ but such a requirement has been upheld by another court under the rational basis standard.¹⁴

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Footnotes

- 1 U.S.—*Steffan v. Perry*, 41 F.3d 677, 96 Ed. Law Rep. 32 (D.C. Cir. 1994).
- 2 U.S.—*Allphin v. U.S.*, 758 F.3d 1336 (Fed. Cir. 2014), cert. denied, 135 S. Ct. 761, 190 L. Ed. 2d 629 (2014).
Okla.—*Oklahoma Public Employees Ass'n v. Oklahoma Military Dept.*, 2014 OK 48, 330 P.3d 497 (Okla. 2014).
Retirement pay for members of reserves or national guard
U.S.—*Alexander v. Fioto*, 430 U.S. 634, 97 S. Ct. 1345, 51 L. Ed. 2d 694 (1977).
Retroactive immunity for injury to another soldier
N.J.—*Phillips v. Curiale*, 128 N.J. 608, 608 A.2d 895 (1992).
Different standards for release of regular and active duty officers
U.S.—*Burns v. U.S.*, 9 Cl. Ct. 273 (1985).
Hearing prior to discharge
A rational basis existed for Army's requirement that servicemembers must serve in Army for six years before being entitled to a hearing prior to a general discharge; thus, the classification did not violate the equal protection rights of a soldier discharged for using cocaine.
U.S.—*Guerra v. Scruggs*, 942 F.2d 270 (4th Cir. 1991).
Discharge from reserve for HIV infection
U.S.—*Charles v. Rice*, 28 F.3d 1312 (1st Cir. 1994).
Qualifications of raters and senior raters
U.S.—*Stoneburner v. Secretary of the Army*, 152 F.3d 485 (5th Cir. 1998).
Prohibition of sale of sexually explicit material at military exchange
U.S.—*PMG Intern. Div. L.L.C. v. Rumsfeld*, 303 F.3d 1163 (9th Cir. 2002).- 3 U.S.—*U.S. v. Spencer*, 473 F.2d 1009 (9th Cir. 1973); *Smith v. U.S.*, 424 F.2d 267 (9th Cir. 1970).
- 4 U.S.—*U.S. v. Clinton*, 310 F. Supp. 333 (E.D. La. 1970).
- 5 U.S.—*Gillette v. U.S.*, 401 U.S. 437, 91 S. Ct. 828, 28 L. Ed. 2d 168 (1971).
Denial of exemption from registration requirement
U.S.—*U.S. v. Schmucker*, 815 F.2d 413 (6th Cir. 1987).- 6 U.S.—*Smith v. U.S.*, 424 F.2d 267 (9th Cir. 1970).
- 7 U.S.—*Kehrli v. Sprinkle*, 524 F.2d 328 (10th Cir. 1975).
- 8 U.S.—*Bowman v. U.S.*, 564 F.3d 765 (6th Cir. 2008).
Filipino veteran benefits
U.S.—*Recinto v. U.S. Dept. of Veterans Affairs*, 706 F.3d 1171 (9th Cir. 2013), cert. denied, 134 S. Ct. 83, 187 L. Ed. 2d 31 (2013).
Limits on benefits a person under two or more veterans' laws
U.S.—*Burke v. U.S.*, 480 F.2d 279 (9th Cir. 1973).
Eviction on foreclosure of veterans' mortgage
U.S.—*Wells v. U.S. Administrator of Veterans Affairs*, 537 F. Supp. 473 (E.D. N.Y. 1982).
Spouses' death benefits
U.S.—*Weinfeld v. U.S.*, 8 F.3d 1415 (9th Cir. 1993); *Carter v. Cleland*, 472 F. Supp. 985 (D.D.C. 1979), judgment aff'd, 643 F.2d 1 (D.C. Cir. 1980).

- 9 U.S.—*Fielder v. Cleland*, 433 F. Supp. 115 (E.D. Mich. 1977), *aff'd*, 577 F.2d 740 (6th Cir. 1978).
Disability benefits
U.S.—*Disabled American Veterans v. U.S. Dept. of Veterans Affairs*, 962 F.2d 136 (2d Cir. 1992); *Absher v. U.S.*, 805 F.2d 1025 (Fed. Cir. 1986).
Philippine veterans
U.S.—*Quiban v. Veterans Admin.*, 928 F.2d 1154 (D.C. Cir. 1991); *Talon v. Brown*, 999 F.2d 514 (Fed. Cir. 1993).
- 10 U.S.—*Johnson v. Robison*, 415 U.S. 361, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974).
- 11 Cal.—*Del Monte v. Wilson*, 1 Cal. 4th 1009, 4 Cal. Rptr. 2d 826, 824 P.2d 632 (1992).
As to veterans' preferences for civil service, see § 1451.
- 12 U.S.—*Farrington v. Adjutant General of State of Mich.*, 492 F. Supp. 1362 (W.D. Mich. 1980).
- 13 U.S.—*Strong v. Collatos*, 593 F.2d 420 (1st Cir. 1979).
- 14 Conn.—*Leech v. Veterans' Bonus Division Appeals Bd.*, 179 Conn. 311, 426 A.2d 289 (1979).

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16C C.J.S. Constitutional Law § 1599

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

P. Other Particular Applications

§ 1599. Civil or personal rights

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3140 to 3142, 3475 to 3669

Government actions affecting civil or personal rights must often pass a strict scrutiny test when challenged on equal protection grounds.

An individual's right to personal liberty is a fundamental right for equal protection purposes.¹ Other recognized fundamental rights, for purposes of equal protection analysis, include the right to vote, the right of interstate travel, rights guaranteed by the First Amendment,² and other rights explicitly or implicitly guaranteed by the Constitution,³ including the right of reproductive freedom⁴ and the right to privacy.⁵ When fundamental rights are affected, strict scrutiny analysis⁶ is used to evaluate an equal protection claim,⁷ and the government must demonstrate a greater public need for the restriction, considering the nature of the affected right, and the extent to which the restriction intrudes upon it.⁸

Although the right to travel is considered a fundamental right, residence requirements do not warrant the application of the strict scrutiny test where the restriction impinges the exercise of that right only to a limited extent;⁹ only those statutory classifications that so burden the right to travel that they function, in effect, as penalties upon those migrating to a new state are subject to strict scrutiny.¹⁰ Thus, residency requirements affecting the right to travel will be upheld against an equal protection challenge

unless they penalize the ability to receive some basic necessity of life, such as welfare benefits or nonemergency medical care, or affect some other fundamental right, such as the right to vote.¹¹

Among the restrictions or classifications that do not infringe upon a fundamental right, for equal protection purposes, are statutes requiring mandatory DNA¹² or HIV¹³ testing of persons charged with or convicted of certain crimes, restrictions on the right to possess firearms,¹⁴ a motorcycle helmet law,¹⁵ and a statute authorizing medical examiners to remove corneal tissue from corpses for transplantation.¹⁶

For equal protection purposes, legislation prohibiting assisting suicide, while permitting the withdrawal of life-sustaining treatment, bears a rational relationship to the legitimate goals of prohibiting intentional killing and preserving life; preventing suicide; maintaining the physicians' role as healers; protecting vulnerable people from indifference, prejudice, and psychological and financial pressure to end their lives; and avoiding a possible slide towards euthanasia even where a provision allowing palliative care related to the withdrawal of life-sustaining treatment may have the foreseen but unintended effect of hastening the patient's death.¹⁷

States are not required by the Fourteenth Amendment to make special accommodations for the disabled, so long as their actions towards those individuals are rational, and any special accommodation is required only by statute.¹⁸

Depending on the situation, the Equal Protection Clause may provide no further protection beyond that provided by the Free Exercise Clause of the First Amendment.¹⁹

Under the equal protection clause of a particular state's constitution, laws that classify individuals based on race or religious beliefs are completely repudiated.²⁰ A marriage-solemnization statute which allows solemnization of marriage by religious officials designated by certain religious groups, but omits equivalent officials of secular groups, such as humanists, and other religions, violates equal protection.²¹

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Footnotes

- 1 Mont.—[Powell v. State Compensation Ins. Fund](#), 2000 MT 321, 302 Mont. 518, 15 P.3d 877 (2000).
Tenn.—[Doe v. Norris](#), 751 S.W.2d 834 (Tenn. 1988).
Freedom from bodily restraint
Freedom from bodily restraint is a fundamental right protected by the Equal Protection Clause.
U.S.—[Ebonie S. v. Pueblo School Dist.](#) 60, 695 F.3d 1051, 285 Ed. Law Rep. 21 (10th Cir. 2012), cert. denied, 133 S. Ct. 1583, 185 L. Ed. 2d 577 (2013).
Incarceration exception
Personal liberty, when deprived by lawful incarceration, is not a fundamental right for purposes of equal protection analysis.
Ill.—[People v. Shephard](#), 152 Ill. 2d 489, 178 Ill. Dec. 724, 605 N.E.2d 518 (1992).
2 Fla.—[Libertarian Party of Florida v. Smith](#), 687 So. 2d 1292 (Fla. 1996).
Ill.—[Committee for Educational Rights v. Edgar](#), 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178, 114 Ed. Law Rep. 576 (1996).
Mo.—[In re Marriage of Woodson](#), 92 S.W.3d 780 (Mo. 2003).
Ohio—[State v. Williams](#), 88 Ohio St. 3d 513, 2000-Ohio-428, 728 N.E.2d 342 (2000).
Pa.—[Doe v. Miller](#), 886 A.2d 310 (Pa. Commw. Ct. 2005), order aff'd, 587 Pa. 502, 901 A.2d 495 (2006).
Residency in state

The Equal Protection Clause guarantees that a citizen of the United States can, of his own volition, become a citizen of any state of the Union by a bona fide residence therein, with the same rights as other citizens of that state.

Minn.—[Schatz v. Interfaith Care Center](#), 811 N.W.2d 643 (Minn. 2012).

Spiritual matters

Mont.—[Armstrong v. State](#), 1999 MT 261, 296 Mont. 361, 989 P.2d 364 (1999).

English requirement

A state constitutional amendment requiring the all state and local government officials and employees to "act" only in English during the performance of government business violated the Equal Protection Clause, since it burdened the fundamental First Amendment right of persons who do not speak English to petition the government for redress of grievances, but was not drawn with narrow specificity to meet the purported compelling state interest of promoting English as a common language.

Ariz.—[Ruiz v. Hull](#), 191 Ariz. 441, 957 P.2d 984 (1998).

3 U.S.—[Ebonie S. v. Pueblo School Dist.](#) 60, 695 F.3d 1051, 285 Ed. Law Rep. 21 (10th Cir. 2012), cert. denied, 133 S. Ct. 1583, 185 L. Ed. 2d 577 (2013).

Mo.—[In re Marriage of Woodson](#), 92 S.W.3d 780 (Mo. 2003).

As to what are personal constitutional rights, see §§ 721 et seq.

As to parenting rights, see § 1584.

Reputation protected by state constitution

Pa.—[R. v. Com., Dept. of Public Welfare](#), 535 Pa. 440, 636 A.2d 142 (1994).

4 Alaska—[State, Dept. of Health & Social Services v. Planned Parenthood of Alaska, Inc.](#), 28 P.3d 904 (Alaska 2001).

Ohio—[State v. Williams](#), 88 Ohio St. 3d 513, 2000-Ohio-428, 728 N.E.2d 342 (2000).

5 Ill.—[Committee for Educational Rights v. Edgar](#), 174 Ill. 2d 1, 220 Ill. Dec. 166, 672 N.E.2d 1178, 114 Ed. Law Rep. 576 (1996).

Mont.—[Powell v. State Compensation Ins. Fund](#), 2000 MT 321, 302 Mont. 518, 15 P.3d 877 (2000).

As to constitutional right to privacy, generally, see §§ 1164 to 1203.

6 § 1277.

7 Mass.—[Blixt v. Blixt](#), 437 Mass. 649, 774 N.E.2d 1052 (2002).

Mont.—[Powell v. State Compensation Ins. Fund](#), 2000 MT 321, 302 Mont. 518, 15 P.3d 877 (2000).

Nev.—[Williams v. State](#), 118 Nev. 536, 50 P.3d 1116 (2002).

8 N.J.—[Abbott v. Burke](#), 100 N.J. 269, 495 A.2d 376, 26 Ed. Law Rep. 670 (1985).

9 U.S.—[Town of Southold v. Town of East Hampton](#), 477 F.3d 38 (2d Cir. 2007).

Alaska—[Public Employees' Retirement System v. Gallant](#), 153 P.3d 346, 217 Ed. Law Rep. 712 (Alaska 2007).

Idaho—[In re Bermudes](#), 141 Idaho 157, 106 P.3d 1123 (2005).

Minor restrictions

Minor restrictions on travel do not amount to the denial of a fundamental right to equal protection.

U.S.—[Joseph v. Hyman](#), 659 F.3d 215 (2d Cir. 2011).

10 Mich.—[Barrow v. City of Detroit Election Com'n](#), 301 Mich. App. 404, 836 N.W.2d 498 (2013), appeal denied, 494 Mich. 866, 831 N.W.2d 461 (2013) and appeal denied, 494 Mich. 866, 831 N.W.2d 461 (2013).

N.C.—[Town of Beech Mountain v. County of Watauga](#), 324 N.C. 409, 378 S.E.2d 780 (1989).

11 U.S.—[Connelly v. Steel Valley School Dist.](#), 706 F.3d 209, 289 Ed. Law Rep. 484 (3d Cir. 2013).

Ohio—[State ex rel. Brown v. Summit County Bd. of Elections](#), 46 Ohio St. 3d 166, 545 N.E.2d 1256 (1989).

As to the validity of residence requirements for voting, see § 1422.

As to residence requirements for medical assistance, see § 1477.

First Amendment rights

An ordinance relating to the distribution of handbills in public places and restricting the issuance of permits to residents is violative of equal protection as applied to a nonresident.

N.Y.—[Blue Bird Coach Lines, Inc. v. City of Niagara Falls](#), 53 N.Y.2d 731, 439 N.Y.S.2d 336, 421 N.E.2d 828 (1981).

12 U.S.—[Wilson v. Collins](#), 517 F.3d 421 (6th Cir. 2008).

Ill.—[In re Jonathon C.B.](#), 2011 IL 107750, 354 Ill. Dec. 484, 958 N.E.2d 227 (Ill. 2011), as modified on denial of reh'g, (Nov. 28, 2011).

- Minn.—*In re Welfare of M.L.M.*, 781 N.W.2d 381 (Minn. Ct. App. 2010), *aff'd*, 813 N.W.2d 26 (Minn. 2012).
- N.D.—*State v. Leppert*, 2003 ND 15, 656 N.W.2d 718 (N.D. 2003).
- 13 Ga.—*Adams v. State*, 269 Ga. 405, 498 S.E.2d 268, 87 A.L.R.5th 803 (1998).
- Ill.—*People v. Adams*, 149 Ill. 2d 331, 173 Ill. Dec. 600, 597 N.E.2d 574 (1992).
- Ohio—*State v. Gonzalez*, 193 Ohio App. 3d 385, 2011-Ohio-1542, 952 N.E.2d 502 (6th Dist. Lucas County 2011).
- A.L.R. Library**
- Validity, and propriety under circumstances, of court-ordered HIV testing, 87 A.L.R.5th 631.
- 14 U.S.—*National Rifle Ass'n of America, Inc. v. McCraw*, 719 F.3d 338 (5th Cir. 2013), *cert. denied*, 134 S. Ct. 1365, 188 L. Ed. 2d 297 (2014).
- Cal.—*People v. Brown*, 227 Cal. App. 4th 451, 173 Cal. Rptr. 3d 812 (3d Dist. 2014), *review filed*, (Aug. 1, 2014).
- Ill.—*Wilson v. County of Cook*, 2012 IL 112026, 360 Ill. Dec. 148, 968 N.E.2d 641 (Ill. 2012).
- N.Y.—*Sgueglia v. Kelly*, 45 Misc. 3d 335, 990 N.Y.S.2d 794 (Sup 2014).
- Pa.—*Com. v. Scarborough*, 2014 PA Super 65, 89 A.3d 679 (2014), *appeal denied*, 102 A.3d 985 (Pa. 2014).
- Classification of assault weapons**
- Cal.—*People v. Zondorak*, 220 Cal. App. 4th 829, 163 Cal. Rptr. 3d 491 (4th Dist. 2013).
- 15 Neb.—*Robotham v. State*, 241 Neb. 379, 488 N.W.2d 533 (1992).
- 16 Fla.—*State v. Powell*, 497 So. 2d 1188 (Fla. 1986).
- 17 U.S.—*Vacco v. Quill*, 521 U.S. 793, 117 S. Ct. 2293, 138 L. Ed. 2d 834 (1997).
- Ban in manslaughter statute**
- A general prohibition in a manslaughter statute of assisted suicide did not, on its face, violate the equal protection rights of mentally competent, terminally ill adults since the ban bore a close and substantial relationship to the State's legitimate interests.
- Alaska—*Sampson v. State*, 31 P.3d 88 (Alaska 2001).
- 18 U.S.—*Board of Trustees of University of Alabama v. Garrett*, 531 U.S. 356, 121 S. Ct. 955, 148 L. Ed. 2d 866, 151 Ed. Law Rep. 35 (2001); *Bryant v. New York State Educ. Dept.*, 692 F.3d 202, 284 Ed. Law Rep. 1 (2d Cir. 2012), *cert. denied*, 133 S. Ct. 2022, 185 L. Ed. 2d 885 (2013).
- 19 Me.—*Blount v. Department of Educational and Cultural Services*, 551 A.2d 1377, 51 Ed. Law Rep. 167 (Me. 1988).
- 20 La.—*Soloco, Inc. v. Dupree*, 707 So. 2d 12 (La. 1998).
- 21 U.S.—*Center for Inquiry, Inc. v. Marion Circuit Court Clerk*, 758 F.3d 869 (7th Cir. 2014).

16C C.J.S. Constitutional Law § 1600

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

P. Other Particular Applications

§ 1600. Civil or personal rights—Content of speech or religious activity; public forum doctrine

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3140 to 3142, 3475 to 3669

Equal protection is violated if discretion with regard to expressive conduct is not limited or if distinctions are made based on the content of expression in a public forum.

A state may regulate the use of its public facilities and streets for parades, demonstrations, assemblies, and solicitation of contributions without violating the Equal Protection Clause.¹ Public officials may exercise appropriate, limited discretion concerning the time, place, duration, or manner of use of public facilities in this manner provided that the discretion is exercised with uniformity of method of treatment, free from improper or inappropriate considerations,² but equal protection is violated by an ordinance that provides unlimited discretion to a police official³ or conditions the exercise of First Amendment rights on the ability to prepay estimated police costs.⁴

Equal protection requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives,⁵ and the justifications offered for any distinction it draws must be carefully scrutinized.⁶

Under the Equal Protection Clause, the government may not discriminate among speakers with respect to ideas, subject matter, or the content of messages in forums that have been opened by the State, by granting the use of a public forum to people whose

views it finds acceptable but denying use to those wishing to express less favored or more controversial views.⁷ Under this "public forum doctrine," once a government-controlled forum exists for dissemination of information and expression of ideas, the government may not deny equal access to that forum solely based on content; this equality of access is compelled by the Equal Protection Clause.⁸

The viability of equal protection claims relating to expressive conduct is contingent on the existence of a public forum; only when rights of access associated with a public forum are improperly limited may a court conclude that a fundamental right is impinged,⁹ and strict scrutiny is required.¹⁰

If picketing is allowed in connection with labor disputes, a statute may not prohibit or limit picketing generally¹¹ or of residences.¹²

Municipal ordinances may restrict the hours of street performers without violating equal protection, considering the noise produced.¹³ An ordinance banning street performances, which applied to performances motivated by pleasure or profit, but did not apply to performances advocating religious or political beliefs, did not violate equal protection, absent evidence that any performer other than the ones described by the ordinance ever drew audiences that created serious safety problems.¹⁴

To survive an equal protection challenge, an ordinance regulating the placement of religious displays in a public area must narrowly draw distinctions between privately and publicly sponsored displays.¹⁵ While the denial of a request to place a religious display on municipal property violates equal protection rights, where the denial is based on the content of the religious expression, and other religious groups were permitted to display religious symbols there,¹⁶ refusals have been upheld on the basis that a creche was a structure that constituted an obstruction¹⁷ or that Christmas trees and other secular symbols of Christmas allowed to be displayed do not have a religious connotation.¹⁸ Even though state fair officials confined commercial activities to booths at the fair, permitting members of a religious organization to disseminate religious literature and solicit contributions elsewhere on the fairgrounds would not deny equal protection since protected and commercial speech need not be treated the same.¹⁹

CUMULATIVE SUPPLEMENT

Cases:

County's disparate treatment of Christian evangelists in requiring them to leave city festival celebrating Arab culture based on content of their message violated evangelists' right to equal protection, even though other religious organizations at festival did not parade through festival carrying signs and pig's head to proselytize, and did not attract hostile crowds, where county did not threaten evangelists based on their decision to march with signs and banners, but based on content of messages displayed on signs and banners. *U.S.C.A. Const.Amend. 14. Bible Believers v. Wayne County, Mich.*, 805 F.3d 228 (6th Cir. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*Cox v. State of La.*, 379 U.S. 536, 85 S. Ct. 453, 13 L. Ed. 2d 471 (1965).
As to the relationship between regulation of public places and freedom of speech, see § 990.
Allowing only charitable solicitation in road

Ill.—*People v. Tosch*, 114 Ill. 2d 474, 103 Ill. Dec. 715, 501 N.E.2d 1253 (1986).

U.S.—*Cox v. State of La.*, 379 U.S. 536, 85 S. Ct. 453, 13 L. Ed. 2d 471 (1965).

Colo.—*Trujillo v. City of Walsenburg*, 108 Colo. 427, 118 P.2d 1081 (1941).

Use of park

The failure to advise that a variance could be obtained to use a park, and a flat statement that no permits were issued to use the park were arbitrary and directly resulted in a denial of equal protection rights.

U.S.—*Milwaukee Mobilization for Survival v. Milwaukee County Park Commission*, 477 F. Supp. 1210 (E.D. Wis. 1979).

U.S.—*Central Florida Nuclear Freeze Campaign v. Walsh*, 774 F.2d 1515 (11th Cir. 1985).

U.S.—*Carey v. Brown*, 447 U.S. 455, 100 S. Ct. 2286, 65 L. Ed. 2d 263 (1980).

Colo.—*Dallman v. Ritter*, 225 P.3d 610 (Colo. 2010).

Or.—*State v. Borowski*, 231 Or. App. 511, 220 P.3d 100 (2009).

U.S.—*Carey v. Brown*, 447 U.S. 455, 100 S. Ct. 2286, 65 L. Ed. 2d 263 (1980).

U.S.—*Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972).

Alaska—*Alaska Gay Coalition v. Sullivan*, 578 P.2d 951 (Alaska 1978).

U.S.—*Center for Bio-Ethical Reform, Inc. v. City and County of Honolulu*, 455 F.3d 910 (9th Cir. 2006).

Mall not public forum

U.S.—*American Civil Liberties Union of Nevada v. City of Las Vegas*, 13 F. Supp. 2d 1064 (D. Nev. 1998).

U.S.—*Grayned v. City of Rockford*, 408 U.S. 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972).

Md.—*State v. Schuller*, 280 Md. 305, 372 A.2d 1076 (1977).

U.S.—*Carey v. Brown*, 447 U.S. 455, 100 S. Ct. 2286, 65 L. Ed. 2d 263 (1980).

U.S.—*Croman v. City of Kansas City, Mo.*, 29 F. Supp. 2d 587 (W.D. Mo. 1997), *aff'd*, 168 F.3d 492 (8th Cir. 1998).

U.S.—*Friedrich v. City of Chicago*, 619 F. Supp. 1129 (N.D. Ill. 1985).

U.S.—*Congregation Lubavitch v. City of Cincinnati*, 997 F.2d 1160 (6th Cir. 1993).

U.S.—*Snowden v. Town of Bay Harbor Islands, Florida*, 358 F. Supp. 2d 1178 (S.D. Fla. 2004).

U.S.—*Grutzmacher v. County of Clark*, 33 F. Supp. 2d 896 (D. Nev. 1999).

U.S.—*Lubavitch Chabad House, Inc. v. City of Chicago*, 917 F.2d 341 (7th Cir. 1990).

U.S.—*International Soc. for Krishna Consciousness, Inc. v. Bowen*, 600 F.2d 667 (7th Cir. 1979).

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Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

P. Other Particular Applications

§ 1601. Classification of localities

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3037, 3350, 3480, 3481, 3488, 3512

Equal protection is not violated by laws that do not operate uniformly in various areas or that make distinctions on the basis of population.

The Equal Protection Clause relates to equality between persons rather than between areas,¹ and territorial uniformity is not a constitutional prerequisite.² Differential regulation of certain geographical areas by statutes designed to meet the needs and express preferences of the affected localities is a matter of legislative discretion except where there is a clear conflict with constitutional limitations.³ Without conflicting with the constitutional requirement of equal protection, legislation may be limited in its territorial operation to one or more cities, counties, or other areas,⁴ or different rules may be prescribed for distinct areas⁵ where there is a reasonable or rational basis for the classification,⁶ and all persons similarly situated in the same place are treated alike,⁷ or where the alleged discrimination is in favor of or against a municipal corporation, school district, or other governmental agency.⁸ A state is not compelled by the U.S. Constitution to grant to all its municipal corporations the same powers and liabilities.⁹ However, a statute that grants privileges to, or places burdens on, individuals may be invalidated by an arbitrary or unreasonable classification with respect to territory or locality unless it is shown that there is some ground of difference having a fair and substantial relation to the object of the legislation.¹⁰

Classification according to population.

Since a law does not violate the requirement of equal protection merely because its operation is confined to areas having a designated population,¹¹ classifications based on the population of counties¹² and other political subdivisions¹³ do not violate equal protection provided the classification is a natural one, bears a reasonable relation to the subject of the legislation, and is not arbitrary or capricious.¹⁴

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Footnotes

- 1 U.S.—*Griffin v. County School Bd. of Prince Edward County*, 377 U.S. 218, 84 S. Ct. 1226, 12 L. Ed. 2d 256 (1964).
Ala.—*Herring v. State*, 100 So. 3d 616 (Ala. Crim. App. 2011).
Tex.—*Texas Dept. of Transp. v. City of Sunset Valley*, 146 S.W.3d 637 (Tex. 2004).
- 2 Fla.—*Wednesday Night, Inc. v. City of Fort Lauderdale*, 272 So. 2d 502 (Fla. 1972).
Md.—*Lonaconing Trap Club, Inc. v. Maryland Dept. of Environment*, 410 Md. 326, 978 A.2d 702 (2009).
N.Y.—*Supreme Associates, LLC v. Suozzi*, 34 Misc. 3d 255, 932 N.Y.S.2d 835 (Sup 2011).
Tex.—*Texas Dept. of Transp. v. City of Sunset Valley*, 146 S.W.3d 637 (Tex. 2004).
Va.—*Advanced Towing Co., LLC v. Fairfax County Bd. of Sup'rs*, 280 Va. 187, 694 S.E.2d 621 (2010).
- 3 Minn.—*J.L. Shiely Co. v. Stearns County*, 395 N.W.2d 357 (Minn. 1986).
- 4 U.S.—*Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 99 S. Ct. 383, 58 L. Ed. 2d 292, 26 Fed. R. Serv. 2d 635 (1978).
Fla.—*Wednesday Night, Inc. v. City of Fort Lauderdale*, 272 So. 2d 502 (Fla. 1972).
N.J.—*Jamouneau v. Harner*, 16 N.J. 500, 109 A.2d 640 (1954).
N.Y.—*Rosenthal v. Hartnett*, 36 N.Y.2d 269, 367 N.Y.S.2d 247, 326 N.E.2d 811 (1975).
S.D.—*State v. Smith*, 88 S.D. 76, 216 N.W.2d 149 (1974).
Poll on secession of borough from city
N.Y.—*City of New York v. State*, 76 N.Y.2d 479, 561 N.Y.S.2d 154, 562 N.E.2d 118 (1990).
- 5 Ind.—*Crider v. State*, 258 Ind. 541, 282 N.E.2d 819 (1972).
Urban renewal area
Md.—*Donnelly Advertising Corp. of Maryland v. City of Baltimore*, 279 Md. 660, 370 A.2d 1127 (1977).
- 6 Mo.—*Oliver v. State Tax Com'n of Missouri*, 37 S.W.3d 243 (Mo. 2001).
N.Y.—*Friia v. Pfau*, 121 A.D.3d 750, 994 N.Y.S.2d 151 (2d Dep't 2014).
S.C.—*Town of Hilton Head Island v. Morris*, 324 S.C. 30, 484 S.E.2d 104 (1997).
S.D.—*Tripp County v. State*, 264 N.W.2d 213 (S.D. 1978).
- 7 Fla.—*Pinellas County Dept. of Consumer Affairs v. Castle*, 392 So. 2d 1292 (Fla. 1980).
La.—*Hunter Co. v. McHugh*, 202 La. 97, 11 So. 2d 495 (1942).
Utah—*Child v. City of Spanish Fork*, 538 P.2d 184 (Utah 1975).
- 8 U.S.—*City of Newark v. State of New Jersey*, 262 U.S. 192, 43 S. Ct. 539, 67 L. Ed. 943 (1923).
- 9 U.S.—*Williams v. Eggleston*, 170 U.S. 304, 18 S. Ct. 617, 42 L. Ed. 1047 (1898).
- 10 N.Y.—*Weissman v. Evans*, 56 N.Y.2d 458, 452 N.Y.S.2d 864, 438 N.E.2d 397 (1982).
- 11 Ala.—*Young v. State*, 283 Ala. 676, 220 So. 2d 843 (1969).
Cal.—*Keenan v. San Francisco Unified School Dist.*, 34 Cal. 2d 708, 214 P.2d 382 (1950).
- 12 Neb.—*City of Grand Island v. Hall County*, 196 Neb. 282, 242 N.W.2d 858 (1976).
Wyo.—*Board of County Com'rs v. Geringer*, 941 P.2d 742 (Wyo. 1997).
Judges' qualifications
Fla.—*Treiman v. State ex rel. Miner*, 343 So. 2d 819 (Fla. 1977).
- 13 Ala.—*Phalen v. Birmingham Racing Com'n*, 481 So. 2d 1108 (Ala. 1985).
Mich.—*Bankhead v. McEwan*, 387 Mich. 610, 198 N.W.2d 414 (1972).
Okla.—*Lindauer v. Oklahoma City Urban Renewal Authority*, 1972 OK 40, 496 P.2d 1174 (Okla. 1972).

14

U.S.—[Lindauer v. Oklahoma City Urban Renewal Authority](#), 452 F.2d 117 (10th Cir. 1971).

Okla.—[Williams v. Starr](#), 1975 OK CIV APP 13, 534 P.2d 29 (Ct. App. Div. 2 1975).

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16C C.J.S. Constitutional Law § 1602

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Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

P. Other Particular Applications

§ 1602. Contracts

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3368, 3675 to 3677

Equal protection requirements must be satisfied by statutes and other governmental actions relating to contracts.

Statutes or other government actions relating to contracts must comply with the requirements of equal protection,¹ by having a rational relationship to a legitimate state interest.² A statute governing the letting of public contracts must be narrowly tailored to achieve State's compelling interest.³

A statute favoring residents in the letting of public contracts may comply with equal protection, applying the rational basis test.⁴ Bid specifications do not violate equal protection so long as any contractor is free to bid.⁵ The adoption of a project labor agreement is subject to rational basis scrutiny,⁶ and does not violate the equal protection rights of nonunion contractors and workers, since there is a close nexus with a state interest in securing meaningful labor concessions and promptly completing the project.⁷

A state constitutional provision forbidding cities awarding public contracts from granting preferential treatment based on race or gender does not violate the political structure doctrine under the Federal Equal Protection Clause.⁸ However, where a statute

provides for the letting of a public contract involving a suspect classification, strict scrutiny analysis of the statute may be required.⁹

The denial to an illegitimate child of participation in the proceeds of a life insurance policy may, under certain circumstances, offend the Equal Protection Clause.¹⁰

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Footnotes

- 1 U.S.—*Mabey Bridge & Shore, Inc. v. Schoch*, 666 F.3d 862 (3d Cir. 2012).
Cal.—*Centeno v. Roseville Community Hospital*, 107 Cal. App. 3d 62, 167 Cal. Rptr. 183 (3d Dist. 1979).
Fla.—*E. M. Watkins & Co., Inc. v. Board of Regents*, 414 So. 2d 583 (Fla. 1st DCA 1982).
Tex.—*Superior Oil Co. v. City of Port Arthur*, 628 S.W.2d 94 (Tex. App. Beaumont 1981), writ refused n.r.e.
- 2 U.S.—*USfalcon, Inc. v. U.S.*, 92 Fed. Cl. 436 (2010).
Iowa—*Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444 (Iowa 2013).
Kan.—*Board of Educ. of Unified School Dist. No. 443, Ford County v. Kansas State Bd. of Educ.*, 266 Kan. 75, 966 P.2d 68, 130 Ed. Law Rep. 308 (1998).
N.Y.—*Empire State Chapter of Associated Builders and Contractors, Inc. v. Smith*, 21 N.Y.3d 309, 970 N.Y.S.2d 724, 992 N.E.2d 1067 (2013).
Loans
Making municipal development loans to a developer did not violate equal protection since there was an important public concern in developing the central city area, and the challenger did not present any support for the contention that the issuance of the loans was arbitrary and wholly without any rational relationship to a valid concern.
Kan.—*Duckworth v. City of Kansas City*, 243 Kan. 386, 758 P.2d 201 (1988).
- 3 U.S.—*Associated General Contractors of America, San Diego Chapter, Inc. v. California Dept. of Transp.*, 713 F.3d 1187 (9th Cir. 2013).
- 4 S.C.—*Gary Concrete Products, Inc. v. Riley*, 285 S.C. 498, 331 S.E.2d 335 (1985).
Wyo.—*Galesburg Const. Co. Inc. of Wyoming v. Board of Trustees of Memorial Hospital of Converse County*, 641 P.2d 745 (Wyo. 1982).
Domestic shipbuilders
Wash.—*Equitable Shipyards, Inc. v. State By and Through Dept. of Transp.*, 93 Wash. 2d 465, 611 P.2d 396 (1980).
Highway contractors
Ark.—*APAC-Mississippi, Inc. v. Deep South Const. Co., Inc.*, 288 Ark. 277, 704 S.W.2d 620 (1986).
- 5 Cal.—*Associated Builders and Contractors, Inc. v. San Francisco Airports Com.*, 21 Cal. 4th 352, 87 Cal. Rptr. 2d 654, 981 P.2d 499 (1999).
- 6 Iowa—*Master Builders of Iowa, Inc. v. Polk County*, 653 N.W.2d 382 (Iowa 2002), as corrected, (Nov. 22, 2002).
Project labor agreements are generally discussed in C.J.S., *Labor Relations* § 311.
- 7 Alaska—*Laborers Local No. 942 v. Lampkin*, 956 P.2d 422, 126 Ed. Law Rep. 437 (Alaska 1998).
- 8 Cal.—*Coral Const., Inc. v. City and County of San Francisco*, 50 Cal. 4th 315, 113 Cal. Rptr. 3d 279, 235 P.3d 947 (2010).
- 9 **Racial classification**
Statute setting a defense contract goal for small, disadvantaged businesses (SDBs) was subject to strict scrutiny in equal protection challenge to statute brought by unsuccessful bidder on defense contract where statute incorporated an explicit racial classification in its presumption that members of certain minority groups were socially disadvantaged for purposes of obtaining SDB status and the benefits that flow from that status.
U.S.—*Rothe Development Corp. v. Department of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).
- 10 Minn.—*Unborn Child v. Evans*, 310 Minn. 197, 245 N.W.2d 600 (1976).

As to the equal protection rights of children born out of wedlock, generally, see § 1585.

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

P. Other Particular Applications

§ 1603. Environment and health

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West's Key Number Digest

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Governmental actions relating to environmental regulation and health that afford equal protection have been upheld.

The right of equal protection does not restrict a state's ability to establish reasonable environmental regulations even if they apply only in a certain area where a state is addressing an environmental problem peculiar to that area.¹

Legislation or other government action relating to water rights,² water quality and pollution,³ and fluoridation of the public water supply⁴ have been upheld. An exemption of federal water reclamation projects from procedural requirements related to applications to change water storage methods was not arbitrary.⁵

Regulations on noise emissions have been upheld⁶ even though they exempt certain sources.⁷

Based on the legitimate legislative object of protecting public health,⁸ equal protection was not denied by restrictions on who may obtain a solid or hazardous waste permit,⁹ and on the placement of solid waste facilities,¹⁰ or by differences in permit conditions¹¹ or various penalties for violations of a solid waste management act.¹²

Courts have upheld, in the face of equal protection challenges, an ordinance prohibiting the erection of fences in a specified area to protect endangered species,¹³ wetland¹⁴ and tidewater¹⁵ regulations, laws governing the disposition of state natural resources,¹⁶ and exemptions from a motor vehicle emissions inspection program.¹⁷

As smoking is not a fundamental right¹⁸ or a suspect classification,¹⁹ regulations restricting smoking are subject to rational basis review for an equal protection violation.²⁰ Exceptions to smoking restrictions²¹ and laws giving business owners the choice to have a smoking section²² have been upheld despite equal protection challenges.

A statute providing that it is a state health department's responsibility to establish alcoholism rehabilitation programs throughout the state was not selectively enforced, even though the agency required that a community apply for the services, since it would have been impractical for the State to implement an inpatient program in every community, and arbitrariness or discrimination based on a suspect classification was not alleged.²³ A statutory requirement that a physician, but not testing labs, disclose information regarding persons who tested positive for HIV and AIDS did not violate equal protection where testing labs did not know the identities of persons being tested.²⁴

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Footnotes

- 1 Fla.—[Department of Community Affairs v. Moorman](#), 664 So. 2d 930 (Fla. 1995).
Inclusion of particular rural county in air quality region
Md.—[Department of Transp., Motor Vehicle Admin. v. Armacost](#), 299 Md. 392, 474 A.2d 191 (1984).
Wind energy
Wind Energy Act did not violate the equal protection rights of users of a lake by not treating the lake as a scenic resource as the statute was enacted as a means to promote wind as a renewable energy source and streamline the permitting process for wind energy, the statute streamlined the permitting process by concisely defining a scenic resource of the state, and the definition rationally related to the State's legitimate interest in promoting wind energy and an efficient permitting process.
Me.—[Friends of Maine's Mountains v. Board of Environmental Protection](#), 2013 ME 25, 61 A.3d 689 (Me. 2013).
- 2 Colo.—[Simpson v. Cotton Creek Circles, LLC](#), 181 P.3d 252 (Colo. 2008).
Ga.—[Hitch v. Vasarhelyi](#), 302 Ga. App. 381, 691 S.E.2d 286 (2010).
Idaho—[Miles v. Idaho Power Co.](#), 116 Idaho 635, 778 P.2d 757 (1989).
Mont.—[Matter of Yellowstone River](#), 253 Mont. 167, 832 P.2d 1210 (1992).
Tex.—[Barshop v. Medina County Underground Water Conservation Dist.](#), 925 S.W.2d 618 (Tex. 1996).
- 3 U.S.—[U.S. v. Bailey](#), 571 F.3d 791 (8th Cir. 2009).
Ala.—[Peak v. City of Tuscaloosa](#), 73 So. 3d 5 (Ala. Crim. App. 2011).
Md.—[Maryland Dept. of Environment v. Days Cove Reclamation Co., Inc.](#), 200 Md. App. 256, 27 A.3d 565 (2011).
Rational basis test
Court of appeals evaluates an equal protection challenge to a statute that regulates groundwater using the rational basis test.
Colo.—[Edwards Aquifer Authority v. Day](#), 274 S.W.3d 742 (Tex. App. San Antonio 2008), judgment aff'd, 369 S.W.3d 814 (Tex. 2012).
Prohibition of variances
Wyo.—[U. S. Steel Corp. v. Wyoming Environmental Quality Council](#), 575 P.2d 749 (Wyo. 1978).
Sewage
Liquid waste disposal business's allegations that various actions taken by city were arbitrary, capricious, and irrational and constituted harassment stated a claim under equal protection provision of state constitution; business alleged that city kept discharge line plugged despite evidence that other transporters were

responsible for illegally dumping waste into sewer system, that city issued frivolous violations and engaged in illegal sampling, and that no other industrial customer had been treated similarly.

Tex.—*City of Houston v. Downstream Environmental, L.L.C.*, 444 S.W.3d 24 (Tex. App. Houston 1st Dist. 2014), review denied, (Dec. 5, 2014).

R.I.—*Town of Lincoln v. City of Pawtucket*, 745 A.2d 139 (R.I. 2000).

Selective enforcement not shown

Miss.—*Titan Tire of Natchez, Inc. v. Mississippi Com'n on Environmental Quality*, 891 So. 2d 195 (Miss. 2004).

La.—*Chapman v. City of Shreveport*, 225 La. 859, 74 So. 2d 142 (1954).

S.C.—*Hall v. Bates*, 247 S.C. 511, 148 S.E.2d 345 (1966).

N.M.—*City of Raton v. Vermejo Conservancy Dist.*, 1984-NMSC-037, 101 N.M. 95, 678 P.2d 1170 (1984).

U.S.—*Reget v. City of La Crosse*, 595 F.3d 691 (7th Cir. 2010).

Ill.—*Rockford Drop Forge Co. v. Pollution Control Bd.*, 79 Ill. 2d 271, 37 Ill. Dec. 600, 402 N.E.2d 602 (1980).

Md.—*Lonaconing Trap Club, Inc. v. Maryland Dept. of Environment*, 410 Md. 326, 978 A.2d 702 (2009).

Ill.—*Illinois Coal Operators Ass'n v. Pollution Control Bd.*, 59 Ill. 2d 305, 319 N.E.2d 782 (1974).

Md.—*Lonaconing Trap Club, Inc. v. Maryland Dept. of Environment*, 410 Md. 326, 978 A.2d 702 (2009).

Pa.—*Com. v. Parker White Metal Co.*, 512 Pa. 74, 515 A.2d 1358 (1986).

Ind.—*Indiana Dept. of Environmental Management v. Chemical Waste Management, Inc.*, 643 N.E.2d 331 (Ind. 1994).

Ark.—*Johnson v. Sunray Services, Inc.*, 306 Ark. 497, 816 S.W.2d 582 (1991).

Conn.—*City Recycling, Inc. v. State*, 257 Conn. 429, 778 A.2d 77 (2001).

Ind.—*Worman Enterprises, Inc. v. Boone County Solid Waste Management Dist.*, 805 N.E.2d 369 (Ind. 2004).

Pa.—*Com. v. Parker White Metal Co.*, 512 Pa. 74, 515 A.2d 1358 (1986).

Fla.—*Department of Community Affairs v. Moorman*, 664 So. 2d 930 (Fla. 1995).

Conn.—*Mario v. Town of Fairfield*, 217 Conn. 164, 585 A.2d 87 (1991).

Ga.—*Rouse v. Department of Natural Resources*, 271 Ga. 726, 524 S.E.2d 455 (1999).

Alaska—*Reichmann v. State, Dept. of Natural Resources*, 917 P.2d 1197 (Alaska 1996).

N.M.—*Chapman v. Luna*, 1984-NMSC-029, 101 N.M. 59, 678 P.2d 687 (1984).

Cal.—*Walgreen Co. v. City and County of San Francisco*, 185 Cal. App. 4th 424, 110 Cal. Rptr. 3d 498 (1st Dist. 2010).

N.C.—*Liebes v. Guilford County Dept. of Public Health*, 724 S.E.2d 70 (N.C. Ct. App. 2011).

Ohio—*Deer Park Inn v. Ohio Dept. of Health*, 185 Ohio App. 3d 524, 2009-Ohio-6836, 924 N.E.2d 898 (10th Dist. Franklin County 2009).

U.S.—*Gallagher v. City of Clayton*, 699 F.3d 1013 (8th Cir. 2012), cert. denied, 133 S. Ct. 2354, 185 L. Ed. 2d 1067 (2013).

Cal.—*Walgreen Co. v. City and County of San Francisco*, 185 Cal. App. 4th 424, 110 Cal. Rptr. 3d 498 (1st Dist. 2010).

Kan.—*Downtown Bar and Grill, LLC v. State*, 294 Kan. 188, 273 P.3d 709 (2012).

Kan.—*Edwards v. Morrow*, 219 N.C. App. 452, 725 S.E.2d 366 (2012).

Ohio—*Deer Park Inn v. Ohio Dept. of Health*, 185 Ohio App. 3d 524, 2009-Ohio-6836, 924 N.E.2d 898 (10th Dist. Franklin County 2009).

Restrictions as to place

Rational basis existed, as required by equal protection, for distinction in city-county smoking ordinance banning smoking in traditional bars but not in tobacco specialty bars.

U.S.—*Goodpaster v. City of Indianapolis*, 736 F.3d 1060 (7th Cir. 2013).

Outdoor smoking

City ordinance prohibiting outdoor smoking on certain public property did not violate equal protection as it was rationally related to legitimate government interest in preserving and protecting public health, safety, and welfare.

U.S.—*Gallagher v. City of Clayton*, 699 F.3d 1013 (8th Cir. 2012), cert. denied, 133 S. Ct. 2354, 185 L. Ed. 2d 1067 (2013).

21 **Bars and gambling facilities**

W. Va.—[Foundation For Independent Living, Inc. v. The Cabell-Huntington Bd. of Health](#), 214 W. Va. 818, 591 S.E.2d 744 (2003).

22 Wash.—[Entertainment Industry Coalition v. Tacoma-Pierce County Health Dept.](#), 153 Wash. 2d 657, 105 P.3d 985 (2005).

23 Alaska—[Goodlataw v. State, Dept. of Health and Social Services](#), 698 P.2d 1190 (Alaska 1985).

24 Ala.—[Middlebrooks v. State Bd. of Health](#), 710 So. 2d 891 (Ala. 1998).

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16C C.J.S. Constitutional Law § 1604

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

P. Other Particular Applications

§ 1604. Fishing laws

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3718

Laws the regulate fishing are upheld unless they contain arbitrary distinctions.

Laws that reasonably regulate or restrict fishing rights in particular waters or particular portions of a state, and apply equally to all persons of the same class who may take advantage of those rights, are consistent with equal protection¹ unless a law encompasses an arbitrary classification, having no reasonable relation to the subject and purpose of the regulation, or confers special privileges.² Accordingly, statutes that ban taking certain species³ or the sale, transportation, or possession for sale of certain types of fish⁴ or regulate the methods and equipment to be used for fishing in certain areas or for certain types of fish⁵ do not violate equal protection. Requirements for applying for certain licenses⁶ and the methods of allocating commercial fishing rights⁷ have also been upheld except where the method of determining if an applicant has an alternative occupation would result in an arbitrary allotment of permits.⁸ A penalty for violating the fishery laws does not violate equal protection if it is rationally related to a legislature's express purpose of promoting the enhancement of the state's marine resources.⁹

The Equal Protection Clause does not preclude reasonable distinctions between residents and nonresidents with respect to fishing.¹⁰ However, other particular statutes that discriminate against nonresidents deny equal protection.¹¹ Statutes that limit or restrict the fishing rights of resident aliens may violate equal protection.¹²

American Indians.

The grant of different fishing rights to American Indians, or their exemption from regulations, particularly where treaty provisions are involved, does not constitute a denial of equal protection.¹³

A requirement that persons who are not members of a particular Indian tribe pay a special licensing fee for the privilege of fishing within the reservation is not a denial of equal protection to non-Indians.¹⁴

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Footnotes

- 1 U.S.—*Rhode Island Fishermen's Alliance, Inc. v. Rhode Island Dept. Of Environmental Management*, 585 F.3d 42 (1st Cir. 2009).
Alaska—*Gilbert v. State, Dept. of Fish and Game, Bd. of Fisheries*, 803 P.2d 391 (Alaska 1990).
Mass.—*Roche v. Director of Div. of Marine Fisheries*, 76 Mass. App. Ct. 733, 926 N.E.2d 559 (2010).
Va.—*Bradford v. Nature Conservancy*, 224 Va. 181, 294 S.E.2d 866 (1982).
Wash.—*Neah Bay Chamber of Commerce v. Department of Fisheries*, 119 Wash. 2d 464, 832 P.2d 1310 (1992).
- 2 Ariz.—*Begay v. Sawtelle*, 53 Ariz. 304, 88 P.2d 999 (1939).
Discrimination against newcomers
Cal.—*Del Mar Canning Co. v. Payne*, 29 Cal. 2d 380, 175 P.2d 231 (1946).
- 3 **Scallops**
Me.—*State v. Eaton*, 577 A.2d 1162 (Me. 1990).
- 4 Fla.—*State v. Millington*, 377 So. 2d 685 (Fla. 1979).
Mich.—*People v. Zimberg*, 321 Mich. 655, 33 N.W.2d 104 (1948).
- 5 Tex.—*Stockton v. Parks and Wild Life Commission*, 571 S.W.2d 338 (Tex. Civ. App. Austin 1978).
Wash.—*Puget Sound Harvesters Ass'n v. Washington State Dept. of Fish and Wildlife*, 182 Wash. App. 857, 332 P.3d 1046 (Div. 1 2014).
Sponge diving apparatus
U.S.—*Skiriotes v. State of Florida*, 313 U.S. 69, 61 S. Ct. 924, 85 L. Ed. 1193 (1941).
Net fishing
Fla.—*Lane v. Chiles*, 698 So. 2d 260 (Fla. 1997).
Regulating net size
Tex.—*Morgan v. State*, 470 S.W.2d 877 (Tex. Crim. App. 1971).
Prohibiting use of scuba equipment
R.I.—*Cherenzia v. Lynch*, 847 A.2d 818 (R.I. 2004).
Towing drag or trawl
Me.—*State v. Eaton*, 577 A.2d 1162 (Me. 1990).
- 6 La.—*Louisiana Seafood Management Council v. Louisiana Wildlife and Fisheries Com'n*, 715 So. 2d 387 (La. 1998).
- 7 Alaska—*Yunker v. Alaska Commercial Fisheries Entry Commission*, 598 P.2d 917 (Alaska 1979).
Wash.—*Foley v. Department of Fisheries*, 119 Wash. 2d 783, 837 P.2d 14 (1992).
- 8 Alaska—*Deubelbeiss v. Commercial Fisheries Entry Com'n*, 689 P.2d 487 (Alaska 1984).
- 9 La.—*State v. Weaver*, 805 So. 2d 166 (La. 2002).
- 10 Me.—*State v. Alley*, 274 A.2d 718 (Me. 1971).
Mass.—*Barlow v. Town of Wareham*, 401 Mass. 408, 517 N.E.2d 146 (1988).
As to discrimination on the basis of residency, generally, see § 1262.

- As to whether these laws violate the Privileges and Immunities Clause, see § 1223.
- 11 **Outfitters**
Since the evidence did not establish that nonresident fishing outfitters are any more careless, more disrespectful of property rights, or less subject to law enforcement procedures than resident outfitters, statutes limiting the licensing of nonresident outfitters denied equal protection
Mont.—[Godfrey v. Montana State Fish & Game Commission](#), 193 Mont. 304, 631 P.2d 1265 (1981).
- 12 **Physical presence**
A statute requiring that a resident be physically present within the state for at least eight months of each year, for at least three years prior to the application, to be eligible for a lobster fishing license, violates equal protection.
U.S.—[Massey v. Apollonio](#), 387 F. Supp. 373 (D. Me. 1974).
- 13 U.S.—[Torao Takahashi v. Fish and Game Commission](#), 334 U.S. 410, 68 S. Ct. 1138, 92 L. Ed. 1478 (1948).
N.H.—[Opinion of the Justices](#), 115 N.H. 222, 337 A.2d 354 (1975).
As to the constitutionality of statutes discriminating against aliens, see § 1594.
- 14 U.S.—[Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n](#), 443 U.S. 658, 99 S. Ct. 3055, 61 L. Ed. 2d 823 (1979), opinion modified on other grounds, 444 U.S. 816, 100 S. Ct. 34, 62 L. Ed. 2d 24 (1979).
As to the constitutionality of laws affecting American Indians under the Equal Protection Clause, generally, see § 1595.
- 14 Minn.—[State v. Forge](#), 262 N.W.2d 341 (Minn. 1977).

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16C C.J.S. Constitutional Law § 1605

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

P. Other Particular Applications

§ 1605. Hunting laws

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

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A statute reasonably regulating the right to take game, which applies equally to all persons of the same class, does not violate the Equal Protection Clause.

The privilege to hunt is not a fundamental right for the purpose of equal protection analysis.¹ The Equal Protection Clause is generally not violated by a statute regulating the right to take game² as where it prescribes different regulations for different classes of persons³ or for different portions of the state,⁴ or declares and defines a closed season for certain game,⁵ or regulates the transporting of game.⁶ However, a statute that extends beyond a state's interest in protecting wildlife and contains exemptions that permit arbitrary and irrational enforcement violates equal protection.⁷

Hunting laws must conform to the applicable constitutional standards guaranteeing equal protection to resident aliens,⁸ and the Supreme Court has upheld a statute making it unlawful for resident aliens to kill wild game except in defense of person or property.⁹

A statute that imposes substantially higher license fees on nonresidents than on residents, or limits the kind of license available to nonresidents, does not violate the Equal Protection Clause where it is reasonably related to the preservation of finite resources.¹⁰ A regulation granting residents a preference to take certain game for personal use does not violate equal protection for similar reasons.¹¹ Equal protection is not violated by a statute requiring that nonresident hunters have guides, if the statute is limited to dangerous wilderness areas, and does not distinguish among species if hunting for them is equally dangerous¹² although such a statute was invalid as applied to a nonresident who was a local landowner.¹³

A provision allowing the revocation of a hunting license if the person is found guilty of any wildlife code violation satisfied equal protection requirements as a reasonable means of achieving wildlife conservation.¹⁴

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Footnotes

- 1 S.C.—*Lee v. South Carolina Dept. of Natural Resources*, 339 S.C. 463, 530 S.E.2d 112 (2000).
Wyo.—*O'Brien v. State*, 711 P.2d 1144 (Wyo. 1986).
- 2 Alaska—*Alaska Fish and Wildlife Conservation Fund v. State*, 2015 WL 1393374 (Alaska 2015).
Va.—*Bradford v. Nature Conservancy*, 224 Va. 181, 294 S.E.2d 866 (1982).
Placement of duck blinds
U.S.—*Wampler v. Lecompte*, 282 U.S. 172, 51 S. Ct. 92, 75 L. Ed. 276 (1930).
- 3 **State wildlife employees barred from obtaining permits**
Utah—*Utah Public Emp. Ass'n v. State*, 610 P.2d 1272 (Utah 1980).
Riparian owners
Va.—*Avery v. Beale*, 195 Va. 690, 80 S.E.2d 584 (1954).
Non-Indians on reservations
Mont.—*State v. Shook*, 2002 MT 347, 313 Mont. 347, 67 P.3d 863 (2002), as amended on denial of reh'g, (Feb. 11, 2003).
- 4 **Controlled use areas**
Alaska—*Interior Alaska Airboat Ass'n, Inc. v. State, Bd. of Game*, 18 P.3d 686 (Alaska 2001).
Goose hunting prohibited near lake
Colo.—*Collopy v. Wildlife Commission, Dept. of Natural Resources*, 625 P.2d 994 (Colo. 1981).
Sunday ban in certain counties
S.C.—*Lee v. South Carolina Dept. of Natural Resources*, 339 S.C. 463, 530 S.E.2d 112 (2000).
- 5 S.C.—*State v. Thompson*, 349 S.C. 346, 563 S.E.2d 325 (2002).
- 6 Alaska—*Herscher v. State, Dept. of Commerce*, 568 P.2d 996 (Alaska 1977).
- 7 **Spotlighting wildlife or domestic animals**
Mont.—*State v. Austin*, 217 Mont. 265, 704 P.2d 55 (1985).
- 8 N.H.—*Opinion of the Justices*, 115 N.H. 222, 337 A.2d 354 (1975).
As to the equal protection rights of aliens, see § 1262, and the validity of statutes discriminating against aliens, see § 1594.
- 9 U.S.—*Patson v. Com. of Pennsylvania*, 232 U.S. 138, 34 S. Ct. 281, 58 L. Ed. 539 (1914).
- 10 U.S.—*Baldwin v. Fish and Game Commission of Montana*, 436 U.S. 371, 98 S. Ct. 1852, 56 L. Ed. 2d 354 (1978).
As to the equal protection rights of nonresidents, generally, see § 1262.
- 11 Alaska—*Shepherd v. State, Dept. of Fish and Game*, 897 P.2d 33 (Alaska 1995).
- 12 Wyo.—*O'Brien v. State*, 711 P.2d 1144 (Wyo. 1986).
- 13 Mont.—*State v. Jack*, 167 Mont. 456, 539 P.2d 726 (1975).
- 14 Ill.—*Russell v. Department of Natural Resources*, 183 Ill. 2d 434, 233 Ill. Dec. 782, 701 N.E.2d 1056 (1998).

16C C.J.S. Constitutional Law § 1606

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

P. Other Particular Applications

§ 1606. Mentally disabled persons

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3140 to 3143

The commitment and treatment of mentally ill and developmentally disabled persons must comply with equal protection requirements.

Civil commitment proceedings of mentally disordered persons are subject to equal protection requirements.¹ Since mental illness is not a suspect classification,² distinctions made by civil commitment statutes generally will not be invalidated on equal protection grounds unless they lack a rational basis, even though a liberty interest is implicated,³ although, in some instances, the courts have applied an intermediate scrutiny⁴ or a strict scrutiny standard.⁵ Different procedures relating to the commitment and release of persons committed civilly or after being acquitted by reason of insanity need only have a rational basis since the acquitted persons constitute a special class.⁶ The involuntary placement of mentally ill minors by a parent in a state hospital, unrelated to state action, does not deny equal protection notwithstanding different facilities are available for the care of wards of the juvenile court, and the minor is not entitled to a trial or hearing.⁷

Proof of an act committed several years in the past, to establish a present dangerous condition, does not contravene equal protection where that evidence is still probative of the respondent's present mental state.⁸ Where appellate review of commitment

proceedings is allowed, equal protection requires that indigents involuntarily committed have equal access to the review process.⁹

A rational basis exists for a state's statutory imposition of a higher burden of proof in proceedings for the involuntary commitment of mentally ill persons than mentally retarded ones, and for allowing close relatives to participate only in proceedings to commit the mentally retarded, and those commitment procedures do not violate equal protection.¹⁰ The indeterminate commitment of mentally retarded persons, but not mentally ill and chemically dependent persons, does not deny equal protection where the legislature decided that indeterminate commitment subject to judicial review on the patient's motion is more effective.¹¹ However, the placement of developmentally disabled adults in a state hospital without a knowing and intelligent waiver of their rights, or a judicial determination that placement is appropriate, is a denial of equal protection, in the absence of a rational basis for denying those persons the procedural rights granted other incompetent adults.¹²

Mental health agencies may constitutionally provide differential services and treatment.¹³ The administration of psychotropic drugs to persons who have been involuntarily committed violates their right to equal protection where no consideration is given to their competence to make treatment decisions, and precommitment detainees are treated differently in this regard.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

There is no general due process right to discovery in a criminal case. [U.S.C.A. Const.Amend. 14. LaMar v. Houk, 798 F.3d 405 \(6th Cir. 2015\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 Cal.—[People v. Landau, 214 Cal. App. 4th 1, 154 Cal. Rptr. 3d 1 \(4th Dist. 2013\)](#), review filed, (Mar. 21, 2013).
Mo.—[State v. Kee, 510 S.W.2d 477 \(Mo. 1974\).](#)
Same notice despite length of initial commitment
Wash.—[Matter of Detention of Dydasco, 135 Wash. 2d 943, 959 P.2d 1111 \(1998\).](#)
- 2 Conn.—[State v. Long, 268 Conn. 508, 847 A.2d 862 \(2004\).](#)
S.C.—[In re Treatment and Care of Luckabaugh, 351 S.C. 122, 568 S.E.2d 338 \(2002\).](#)
S.D.—[State v. Laible, 1999 SD 58, 594 N.W.2d 328 \(S.D. 1999\).](#)
- 3 Cal.—[People v. Rosalinda C., 224 Cal. App. 4th 1, 168 Cal. Rptr. 3d 294 \(1st Dist. 2014\).](#)
Colo.—[People In Interest of W.P., 2013 CO 11, 295 P.3d 514 \(Colo. 2013\).](#)
Failure to appoint independent evaluator
Ill.—[People v. Botruff, 212 Ill. 2d 166, 288 Ill. Dec. 105, 817 N.E.2d 463 \(2004\).](#)
Waiver of privilege by involuntary commitment
N.H.—[In re Sandra H., 150 N.H. 634, 846 A.2d 513 \(2004\).](#)
- 4 N.M.—[Griego v. Oliver, 2014-NMSC-003, 316 P.3d 865 \(N.M. 2013\).](#)
Intermediate scrutiny
For purposes of an equal protection challenge, intermediate scrutiny generally applies to statutes that affect a sensitive class of individuals, such as the mentally disabled; intermediate scrutiny requires that the party defending the legislation prove a substantial relationship between the legislation and an important government interest.

N.M.—*Einer v. Rivera*, 2015-NMCA-045, 2015 WL 433648 (N.M. Ct. App. 2015).

Strict scrutiny

Strict scrutiny standard applied to the involuntary commitment of a person for treatment to attain competency to stand trial, which impinges on that person's constitutional guarantee of liberty.

N.M.—*State v. Rotherham*, 1996-NMSC-048, 122 N.M. 246, 923 P.2d 1131 (1996).

Conn.—*State v. Long*, 268 Conn. 508, 847 A.2d 862 (2004).

Haw.—*State v. Miller*, 84 Haw. 269, 933 P.2d 606 (1997).

Me.—*Green v. Commissioner of Mental Health and Mental Retardation*, 2000 ME 92, 750 A.2d 1265 (Me. 2000).

N.H.—*In re Sandra H.*, 150 N.H. 634, 846 A.2d 513 (2004).

N.Y.—*Matter of Oswald N.*, 87 N.Y.2d 98, 637 N.Y.S.2d 949, 661 N.E.2d 679 (1995).

Automatic commitment after acquittal

Wis.—*State v. Field*, 118 Wis. 2d 269, 347 N.W.2d 365 (1984).

Denial of jury trial in civil commitment

Fla.—*In re Jones*, 339 So. 2d 1117 (Fla. 1976).

Recommitment of person previously acquitted

N.Y.—*Matter of Francis S.*, 87 N.Y.2d 554, 640 N.Y.S.2d 840, 663 N.E.2d 881 (1995).

Cal.—*In re Roger S.*, 19 Cal. 3d 921, 141 Cal. Rptr. 298, 569 P.2d 1286 (1977).

Neb.—*In re Interest of Blythman*, 208 Neb. 51, 302 N.W.2d 666 (1981).

Vt.—*In re L.G.*, 158 Vt. 639, 603 A.2d 381 (1992).

U.S.—*Heller v. Doe by Doe*, 509 U.S. 312, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993).

Minn.—*Matter of Harhut*, 385 N.W.2d 305 (Minn. 1986).

Cal.—*In re Hop*, 29 Cal. 3d 82, 171 Cal. Rptr. 721, 623 P.2d 282 (1981).

Judicial hearing required

Under Due Process and Equal Protection Clauses, a judicial hearing is required before a nonconsenting developmentally disabled person may be placed in a state developmental center.

Cal.—*Michelle K. v. Superior Court*, 221 Cal. App. 4th 409, 164 Cal. Rptr. 3d 232 (4th Dist. 2013), review denied, (Feb. 19, 2014).

Mass.—*Williams v. Secretary of Executive Office of Human Services*, 414 Mass. 551, 609 N.E.2d 447, 1 A.D.D. 949 (1993).

Wis.—*State ex rel. Jones v. Gerhardstein*, 141 Wis. 2d 710, 416 N.W.2d 883 (1987).

16C C.J.S. Constitutional Law § 1607

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

P. Other Particular Applications

§ 1607. Sexual predators

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3073(1), 3073(2), 3140 to 3143, 3173 to 3176

While there is disagreement whether statutes calling for the commitment of violent sexual predators are subject to strict scrutiny, they have generally been upheld in the face of equal protection challenges.

While there is authority that the rational basis test¹ applies to equal protection challenges to a sexually violent persons commitment act,² it has also been held that since the civil commitment of persons classified as sexually violent predators impinges on the fundamental right of liberty, strict scrutiny³ is required,⁴ but equal protection is not denied if the statutes are narrowly tailored to serve a state's compelling interest in protecting the public from future violent sex crimes.⁵

While it has been said that persons committed under mental health statutes and under a sexually violent persons act are similarly situated, this does not require that all persons be dealt with identically,⁶ and it has also been held that different treatment of the two groups does not violate equal protection since the persons are not similarly situated.⁷ A state's compelling interest in protecting the public justifies the commitment and treatment of sexually violent persons whose mental disorders make them distinctively dangerous because of the substantial probability that they will continue committing those crimes,⁸ making the function of their confinement different than that of those merely deemed mentally ill,⁹ and sexually violent persons pose

specialized treatment problems that distinguish them from other civilly committed persons for equal protection purposes.¹⁰ For instance, equal protection claims involving the consideration of less restrictive alternatives in sexually violent predator commitment proceedings are subject to rational basis review,¹¹ and precluding the consideration of less restrictive alternatives than total confinement bears a rational relationship to the state interests of providing mental health treatment and protecting the public from predators even though the least restrictive appropriate treatment must be utilized in civil commitment cases.¹² Sexual predators may also be treated differently than other violent offenders¹³ or narcotics addicts.¹⁴

Various requirements of sexually violent predator acts have been upheld as not violating equal protection.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

Undisclosed evidence is "favorable," as element for *Brady* due process claim, if it is either exculpatory or impeaching. U.S.C.A. Const.Amend. 14. *LaMar v. Houk*, 798 F.3d 405 (6th Cir. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 § 1279.
- 2 U.S.—*Litmon v. Harris*, 768 F.3d 1237 (9th Cir. 2014).
Cal.—*People v. Shapiro*, 175 Cal. Rptr. 3d 54 (Cal. App. 4th Dist. 2014).
Fla.—*Westerheide v. State*, 831 So. 2d 93 (Fla. 2002).
Mass.—*In re Dutil*, 437 Mass. 9, 768 N.E.2d 1055 (2002).
Pa.—*Barge v. Pennsylvania Bd. of Probation and Parole*, 39 A.3d 530 (Pa. Commw. Ct. 2012).
Wis.—*In re Commitment of Alger*, 2015 WI 3, 360 Wis. 2d 193, 858 N.W.2d 346 (2015).
Not a suspect class
Status as a sex offender is not a suspect class, like race or national origin, for equal protection analysis. U.S. Const. Amend. XIV.
Kan.—*Merryfield v. State*, 44 Kan. App. 2d 817, 241 P.3d 573 (2010).
- 3 § 1277.
- 4 Ala.—*Herring v. State*, 100 So. 3d 616 (Ala. Crim. App. 2011).
- 5 Ala.—*Herring v. State*, 100 So. 3d 616 (Ala. Crim. App. 2011).
Kan.—*Matter of Hay*, 263 Kan. 822, 953 P.2d 666 (1998).
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Wis.—*In re Commitment of Burgess*, 2003 WI 71, 262 Wis. 2d 354, 665 N.W.2d 124 (2003).

Sex offender registration statutes

U.S.—*Doe v. Cuomo*, 755 F.3d 105 (2d Cir. 2014).

Ariz.—*State v. Lowery*, 230 Ariz. 536, 287 P.3d 830 (Ct. App. Div. 2 2012).

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16C C.J.S. Constitutional Law § 1608

Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

P. Other Particular Applications

§ 1608. Minors; juvenile delinquents

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3088, 3104, 3739, 3741

Laws may treat minors differently than adults without violating equal protection.

The rational basis test is the proper standard for determining whether a law unfairly discriminates against juveniles in violation of the Equal Protection Clause¹ although in some cases strict scrutiny has been applied.² In any case, such law must be the least restrictive means to achieve a legitimate governmental objective.³

For the purpose of delinquency laws, juveniles are not similarly situated to adult criminal defendants, and even if they are, there is a rational basis for treating them differently.⁴

Courts have upheld statutes divesting a juvenile court of jurisdiction of proceedings against children of a specified age for particular violations or crimes, such as murder⁵ or motor vehicle offenses,⁶ or after having committed several prior offenses.⁷ The courts have upheld procedures associated with the transfer or certification of charges against a juvenile to a criminal court,⁸ including the discretion conferred on the prosecution whether to prosecute a juvenile as an adult under certain circumstances,⁹ and statutes mandating or generally requiring that certain types of cases be transferred to criminal court.¹⁰

A juvenile is not denied equal protection by detention without a warrant even if a warrant is required to arrest an adult.¹¹ A different method for requisitioning a juvenile from another state, compared to extraditing an adult, is supported by differences between the objectives of the criminal and juvenile justice systems.¹² Courts have approved the absence of a preliminary hearing to determine probable cause in the case of nondetained juveniles¹³ and precluding the insanity defense in juvenile delinquency proceedings.¹⁴

Juvenile court procedure.

Equal protection does not require that the proceedings in a juvenile court be conducted in the same manner and under the same rules as are applied to adults in criminal proceedings,¹⁵ and reasonable differences regarding the rules of evidence are permissible.¹⁶ The absence of a right to a jury trial in delinquency proceedings does not deny equal protection.¹⁷ While equal protection requires that both parties to juvenile delinquency proceedings have the same right to appeal,¹⁸ equal protection is afforded by statutory provisions relating to the time to appeal in the case of juvenile delinquents¹⁹ and the denial of bail pending an appeal by a juvenile.²⁰

Disposition.

A sentencing program for juveniles does not deny equal protection if it bears a rational relationship to a legitimate state interest in rehabilitating a youthful offender.²¹ In view of the fact that different treatment is justified by a rehabilitative purpose, a juvenile may be given a different penalty for the same offense than an adult.²²

While a statute relating to habitual juvenile offenders, under which a juvenile may be confined for a longer period than an older person, is valid,²³ a statute that put juveniles at risk of serving the adult sentence, in addition to the juvenile disposition, violated a state equal protection clause since the State had no compelling interest in restricting juveniles' liberty beyond the restrictions imposed upon an adult for the same offense.²⁴ A habitual juvenile offender provision which imposes mandatory commitment until juvenile is 21 years old does not violate equal protection as the statute is reasonably designed to remedy evils which the legislature has determined to be a threat to the public health, safety, and welfare.²⁵

However, it has also been held that a statute allowing a juvenile defendant to be sentenced as an adult does not violate the defendant's equal protection rights since there is no constitutional right to be treated as a juvenile,²⁶ and any right a defendant may have to be treated as a juvenile is not an inherent right specifically protected by the constitution but one created by statute.²⁷

The rational basis test applies to an equal protection challenge to the denial of a delinquent's placement in a group foster care facility.²⁸ A statute providing that delinquents over a certain age may not be committed to the family services department does not violate equal protection.²⁹ Restrictive placement of youths who have committed a designated felony has been upheld.³⁰ A different education program for incarcerated minors than that provided by the school system does not violate equal protection.³¹

Since juveniles committed to a state youth authority by a juvenile court are not similarly situated to adults sentenced to prison, youthful offenders are not entitled to the same credits for predisposition detention and good time given to adult prisoners.³² While it has been held that an administrative transfer, without a judicial hearing or determination, to an adult correctional institution, to which the committing juvenile court could not have sentenced the juvenile, violates equal protection,³³ there is also authority that equal protection is not violated by an administrative transfer to prison, which merely changes the place of confinement and does not transform the juvenile adjudication into an adult conviction.³⁴

When a juvenile court orders restitution as condition of a juvenile's probation, equal protection and fundamental fairness concerns require that the juvenile court must inquire into a juvenile's ability to pay the restitution.³⁵

CUMULATIVE SUPPLEMENT

Cases:

Violent juvenile offender provision of the Juvenile Court Act of 1987, under which juvenile twice adjudicated delinquent based on commission of felonies involving violence or firearm must be sentenced to mandatory term of confinement until age of 21, does not violate equal protection, even though provision fails to account for age difference among juveniles, such that confinement until age of 21 might be longer than another individual's term for same offense, given considerations including that there need not be absolute symmetry in sentencing, and that purpose of Act is rehabilitation of minor as well as promoting juvenile system that protects community, imposes accountability for violations of law, and equips juvenile offenders with competencies to live responsibly and productively. *U.S.C.A. Const.Amend. 14*; *S.H.A. Const. Art. 1, § 2*; *S.H.A. 705 ILCS 405/5–101, 405/5–820*. *In re Deshawn G.*, 2015 IL App (1st) 143316, 396 Ill. Dec. 877, 40 N.E.3d 762 (App. Ct. 1st Dist. 2015).

Juvenile did not overcome presumption that prosecution for his statutory rape of eight-year-old while juvenile was 12 years old was initiated in good faith, as required to raise claim that selective prosecution violated equal protection; there was no showing that only distinction between charged juvenile and uncharged victim was some type of impermissible classification such as gender, race, or religion, and juvenile and victim were not similarly situated children under age of 16. *U.S. Const. Amend. 14*; *Mass. Const. pt. 1, arts. 1, 10*; *Mass. Gen. Laws Ann. ch. 265, § 23*. *Commonwealth v. Wilbur W.*, 479 Mass. 397, 95 N.E.3d 259 (2018).

[END OF SUPPLEMENT]

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Footnotes

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Minn.—*In re Welfare of B.A.H.*, 845 N.W.2d 158 (Minn. 2014), petition for certiorari filed, 135 S. Ct. 208, 190 L. Ed. 2d 159 (2014).
N.D.—*In re L.T.*, 2011 ND 120, 798 N.W.2d 657 (N.D. 2011).
- 2 **Curfew**
Strict scrutiny standard applied to equal protection challenge to ordinance imposing six-hour curfew on persons under 17 years of age as constitutional right to freedom of movement was fundamental, and curfew represented sweeping restriction.
Mass.—*Com. v. Weston W.*, 455 Mass. 24, 913 N.E.2d 832 (2009).
- 3 Alaska—*Treacy v. Municipality of Anchorage*, 91 P.3d 252 (Alaska 2004).
Mass.—*Com. v. Weston W.*, 455 Mass. 24, 913 N.E.2d 832 (2009).
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Ill.—*In re Vincent K.*, 2013 IL App (1st) 112915, 377 Ill. Dec. 590, 2 N.E.3d 506 (App. Ct. 1st Dist. 2013).
Mont.—*In re G.T.M.*, 2009 MT 443, 354 Mont. 197, 222 P.3d 626 (2009).
- 5 Alaska—*Gray v. State*, 267 P.3d 667 (Alaska Ct. App. 2011).
Fla.—*State v. G. D. M.*, 394 So. 2d 1017 (Fla. 1981).
- 6 N.H.—*State v. Deflorio*, 128 N.H. 309, 512 A.2d 1133 (1986).
Wis.—*State v. Hart*, 89 Wis. 2d 58, 277 N.W.2d 843 (1979).

- 7 R.I.—*State v. Berard*, 121 R.I. 551, 401 A.2d 448 (1979).
- 8 Ark.—*C.B. v. State*, 2012 Ark. 220, 406 S.W.3d 796 (2012).
Kan.—*State v. Muhammad*, 237 Kan. 850, 703 P.2d 835 (1985).
Mass.—*Com. v. Wayne W.*, 414 Mass. 218, 606 N.E.2d 1323 (1993).
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Nev.—*Anthony Lee R. v. State*, 113 Nev. 1406, 952 P.2d 1 (1997).
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- 13 Colo.—*J. T. v. O'Rourke In and For Tenth Judicial Dist.*, 651 P.2d 407 (Colo. 1982).
- 14 Ark.—*Golden v. State*, 341 Ark. 656, 341 Ark. 963, 21 S.W.3d 801 (2000).
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Cal.—*T.N.G. v. Superior Court*, 4 Cal. 3d 767, 94 Cal. Rptr. 813, 484 P.2d 981 (1971).
- 16 Ill.—*In re Jonathon C.B.*, 2011 IL 107750, 354 Ill. Dec. 484, 958 N.E.2d 227 (Ill. 2011), as modified on denial of reh'g, (Nov. 28, 2011).
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- 17 Wash.—*State v. Schaaf*, 109 Wash. 2d 1, 743 P.2d 240 (1987).
Wis.—*In Interest of Hezzie R.*, 219 Wis. 2d 848, 220 Wis. 2d 360, 580 N.W.2d 660 (1998).
Jury trial only for aggravated offenses
Colo.—*A.C., IV v. People*, 16 P.3d 240 (Colo. 2001).
- 18 Iowa—*In Interest of C.W.R.*, 518 N.W.2d 780 (Iowa 1994).
- 19 Ariz.—*In re Appeal in Maricopa County, Juvenile Action No. J-75755*, 111 Ariz. 103, 523 P.2d 1304 (1974).
- 20 La.—*State in Interest of Banks*, 402 So. 2d 690 (La. 1981).
- 21 Cal.—*In re Spencer S.*, 176 Cal. App. 4th 1315, 98 Cal. Rptr. 3d 477 (4th Dist. 2009).
Fla.—*Jackson v. State*, 137 So. 3d 470 (Fla. 4th DCA 2014), review granted, 147 So. 3d 523 (Fla. 2014).
La.—*State In Interest of D.W.*, 125 So. 3d 1180 (La. Ct. App. 5th Cir. 2013), writ denied, 135 So. 3d 639 (La. 2014).
Forcible and nonforcible offenders
Statutory classification between forcible and nonforcible offenders, subjecting juvenile defendants who have been adjudicated delinquent of a forcible felony to a mandatory five-year probation, was rationally related to purposes of statute governing delinquent minors, which include protecting the public and holding juveniles accountable for violations of the law, and thus did not violate equal protection under rational basis review.
Ill.—*In re Edgar C.*, 2014 IL App (1st) 141703, 388 Ill. Dec. 438, 24 N.E.3d 346 (App. Ct. 1st Dist. 2014).
Cal.—*In re Walter P.*, 170 Cal. App. 4th 95, 87 Cal. Rptr. 3d 668 (3d Dist. 2009).
Mont.—*In re S.M.K.-S.H.*, 2012 MT 281, 367 Mont. 176, 290 P.3d 718 (2012).
Neb.—*In re Interest of A.M.H.*, 233 Neb. 610, 447 N.W.2d 40 (1989).
Habitual offender

Ill.—*In re A.P.*, 2014 IL App (1st) 140327, 383 Ill. Dec. 406, 14 N.E.3d 689 (App. Ct. 1st Dist. 2014).

Indeterminate sentence

Me.—*State v. Gleason*, 404 A.2d 573 (Me. 1979).

Probation, instead of mandatory adult sentence

D.C.—*Matter of L. M.*, 432 A.2d 692 (D.C. 1981).

Different probation term

Wyo.—*Matter of ALJ*, 836 P.2d 307 (Wyo. 1992).

Ill.—*People ex rel. Carey v. Chrastka*, 83 Ill. 2d 67, 46 Ill. Dec. 156, 413 N.E.2d 1269 (1980).

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Ga.—*Pascarella v. State*, 294 Ga. App. 414, 669 S.E.2d 216 (2008).

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N.Y.—*Matter of Quinton A.*, 49 N.Y.2d 328, 425 N.Y.S.2d 788, 402 N.E.2d 126 (1980).

Wash.—*Tunstall ex rel. Tunstall v. Bergeson*, 141 Wash. 2d 201, 5 P.3d 691, 146 Ed. Law Rep. 528 (2000).

Ala.—*Ex parte S.F.R.*, 598 So. 2d 1006 (Ala. 1992).

Cal.—*In re Ricky H.*, 30 Cal. 3d 176, 178 Cal. Rptr. 324, 636 P.2d 13 (1981).

Mo.—*Boone v. Danforth*, 463 S.W.2d 825 (Mo. 1971).

Wash.—*Monroe By and Through Broulette v. Soliz*, 132 Wash. 2d 414, 939 P.2d 205 (1997), as amended, (July 15, 1997).

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Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

P. Other Particular Applications

§ 1609. Sunday or "blue" laws

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3334

Sunday or "blue" laws may be held valid under a rational relationship test.

A statute or ordinance designed to secure the observance of Sunday as a day of rest, passed in the legitimate exercise of the police power¹ without any purely arbitrary discrimination, is not objectionable as denying equal protection,² applying the rational basis standard.³ However, classifications contained in Sunday laws violate equal protection where they do not bear a fair and substantial relationship to providing a uniform day of rest and recreation⁴ or where they rest on grounds wholly irrelevant to the achievement of the State's objective to promote health, recreation, and welfare and to prevent unfair competition.⁵

A Sunday law does not violate equal protection because it excepts from its prohibition works of necessity, emergency, or charity⁶ or exempts stores that employ not more than a specified number of employees⁷ or those operated by the proprietor or members of his or her immediate family.⁸ A statute requiring the manager of a small grocery store to have ownership in the business in order to remain open on Sunday does not deny equal protection.⁹ A statute may validly exempt a person who observes a day other than Sunday as the day of rest and abstains on that day from selling items which may not be sold on Sunday,¹⁰ and the enumeration of certain articles that may not be sold on both Saturday and Sunday does not deny equal protection.¹¹ Sunday

laws have been upheld that bar liquor sales on Sunday, but granting local options to allow certain types of sales,¹² permit only certain methods of selling food¹³ or allow certain business to remain open so long as they do not sell certain listed items.¹⁴

Disparities in prosecuting violators of a Sunday closing law do not necessarily demonstrate an intentional violation of the Equal Protection Clause.¹⁵ Sunday closing laws should not be held unconstitutional on equal protection grounds, absent a showing that prosecutorial selection of enforcement targets was deliberately based on a suspect or other arbitrary classification.¹⁶

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Footnotes

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Md.—*Supermarkets General Corp. v. State*, 286 Md. 611, 409 A.2d 250 (1979).
N.D.—*City of Bismarck v. Materi*, 177 N.W.2d 530 (N.D. 1970).
Tex.—*Gibson Distributing Co., Inc. v. Downtown Development Ass'n of El Paso, Inc.*, 572 S.W.2d 334 (Tex. 1978).
Vt.—*State v. Gilfel of Rutland, Inc.*, 128 Vt. 595, 270 A.2d 153 (1970).
Va.—*Benderson Development Co., Inc. v. Sciortino*, 236 Va. 136, 372 S.E.2d 751 (1988).
Automobile dealers
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R.I.—*City of Warwick v. Almac's, Inc.*, 442 A.2d 1265 (R.I. 1982).- 4 Colo.—*Dunbar v. Hoffman*, 171 Colo. 481, 468 P.2d 742 (1970).
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S.C.—*State v. Smith*, 271 S.C. 317, 247 S.E.2d 331 (1978).
Size of stores
Distinction in Sunday closing law based on size between stores selling same types of goods is not so unreasonable as to be arbitrary and to render Sunday closing law unconstitutional as violative of equal protection.
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